Nova Scotia

ANNUAL REPORT

for the period
April 1, 1990 - August 31, 1991

Public Prosecution Service

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ADDENDUM

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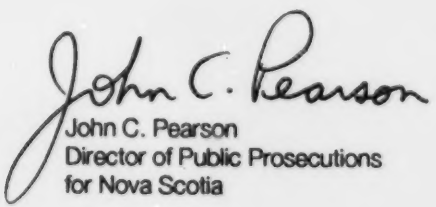
The Honourable Ronald S. Russell, C.D.
Speaker
Province of Nova Scotia
Halifax, Nova Scotia
B3J 2Y3

Mr. Speaker:

I have the honour to submit the Annual Report of the Public Prosecution Service for presentation to the House of Assembly, as required by Section 13 of the *Public Prosecutions Act*.

Respectfully submitted,



John C. Pearson
Director of Public Prosecutions
for Nova Scotia

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REPORT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

INTRODUCTION

On September 1, 1990, the Province of Nova Scotia became the first jurisdiction in Canada to create a statutorily based independent prosecution service. The mission of this prosecution service, as expressed in the legislation creating it,[1] is to ensure fair and equal treatment in the prosecution of offences. The means chosen to achieve this goal is a system of prosecutorial arrangements first implemented in Australia, subsequently embraced by a number of other Commonwealth jurisdictions, and specifically recommended for Nova Scotia by the Royal Commission that inquired into the prosecution of Donald Marshall, Jr.[2]

These new prosecutorial arrangements make all prosecutions within the jurisdiction of the Attorney General of Nova Scotia the responsibility of the Director of Public Prosecutions. The Director of Public Prosecutions conducts prosecutions, either personally or through the Crown Attorneys of the Public Prosecution Service, independently of the Attorney General. The only limitation on the operational independence of the Director of Public Prosecutions permitted by the *Public Prosecutions Act* arises when the Attorney General issues written instructions to the Director of Public Prosecutions. These instructions are binding and must be made public. This procedure preserves the ultimate prosecutorial authority of the Attorney General. It is a means of ensuring accountability to the electorate for the manner in which public prosecutions are conducted.

Another means of ensuring public accountability is the annual report that the Director of Public Prosecutions is required to make to the House of Assembly pursuant to s.13 of the *Public Prosecutions Act.* This is the first such report. It records the activities and concerns of the Public Prosecution Service during the period from April 1, 1990, to

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1 *An Act to Provide for an Independent Director of Public Prosecutions* (hereinafter referred to as the *Public Prosecutions Act*) S.N.S. 1990 c.21, s.2.

1 Recommendation 35, *Royal Commission on the Donald Marshall, Jr., Prosecution*, [Report] 7 Vols. (Halifax: The Royal Commission, 1989). In Working Paper 62, *Controlling Criminal Prosecutions: The Attorney General And The Crown Prosecutor* (Ottawa, 1990), the Law Reform Commission of Canada recommended the statutory creation of a federal Director of Public Prosecutions.

August 31, 1991.[3] It is our hope that this annual report will further public understanding of the role played by the Public Prosecution Service in the administration of criminal justice in Nova Scotia.

THE ROLE OF THE PUBLIC PROSECUTOR

All prosecutions for criminal and provincial offences are brought in the name of the Crown because the Crown is responsible for bringing before the courts those accused of prohibited conduct which adversely affects the safety and well being of the community. As law officer of the Crown in right of Nova Scotia, the Attorney General is the chief public prosecutor.[4] It is the obligation of the Director of Public Prosecutions, as agent of the Attorney General, to ensure that violations of the law are prosecuted effectively and efficiently. The maintenance of law and order is a necessary pre-condition to the functioning of any civilized society. The people of Nova Scotia must be confident that the guilty will be convicted and properly punished. Our system of criminal justice must operate as an effective deterrent against criminal activity.

The notion that all accused should receive fair and equal prosecutorial treatment by the Crown is an aspect of the rule of law. Canada's judicial system operates on an adversarial trial model. It is left up to the parties to frame the issues before the court and lead the evidence relied on in support of their case. The role of defence counsel in this model is to do everything that can be ethically done to secure an acquittal for an accused who has chosen to plead not guilty. The role of Crown Attorney, on the other hand, excludes any notion of winning or losing. The Supreme Court of Canada has expressed the proper frame of mind of those who represent the Crown in the following words:

> ...the situation which the Crown occupies is not that of an advocate in a civil case. His functions are quasi-judicial. He should not seek so much to obtain a verdict of guilty as assist the judge and jury to render the most complete justice. Moderation and impartiality should always characterize his conduct before the court. He will in fact have honestly fulfilled his duty and will be beyond all reproach, if, putting aside any appeal to emotions,

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3 During the period from April 1, 1990 to August 31, 1990 the mandate of the Director of Public Prosecutions was authorized by Orders in Council 90-93 and 90-94. Effective September 1, 1990 the Public Prosecution Service was given a statutory foundation through the proclamation of the *Public Prosecutions Act*.

4 *R. v. Dowson*, [1983] 2 S.C.R. 144, 7 C.C.C. (3d) 527, at pp. 155-57 S.C.R.

> in a dignified manner consistent with his role, he exposes the evidence to the jury without going beyond what it actually reveals....[5]

In assuming this role the Crown Attorney need not forsake the arts of the advocate. Prosecutions should be conducted with vigour and skill. The Crown Attorney's duty is to see to it that every material point is made which supports the prosecution's case or destroys the case put forward by the defence. This duty must be pursued relentlessly, but with scrupulous fairness.

Crown Attorneys discharge a number of responsibilities of fundamental importance to society. They provide legal advice to the police prior to the laying of charges, decide whether a prosecution should proceed after charges have been laid, and exercise discretion with respect to a host of prosecutorial matters during the course of a prosecution.[6] In discharging these responsibilities, a Crown Attorney must be guided by the law, including the supreme law of the land expressed in the *Canadian Charter of Rights and Freedoms*, and the public interest. The public interest involves many considerations. It encompasses the need to protect the overwhelming percentage of law-abiding citizens through the conviction of criminals and the deterrence of crime. The community is entitled to have those charged with offences prosecuted both firmly and efficiently, but it also expects them to be prosecuted fairly. Properly balanced, the public interest in the conviction of the guilty does not conflict with principles of fundamental justice.

The process of prosecutorial decision making, and the manner in which such discretion is exercised, are central to the quality of the criminal justice system. If prosecutorial decisions are to lead to public confidence in the system and are to be consistent with constitutional norms, they must not only be just but must also be seen to be so. The

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5 *Boucher v. Her Majesty the Queen* [1955] S.C.R. 16. In *Nelles* v. *Attorney General of Ontario* (1989), 98 N.R. 321, Lamer J., as he then was, pointed out that traditionally the Crown Attorney has been described as a local "minister of justice."

6 Discretionary powers conferred on the Crown Attorney include determining the suitability of an accused young person for alternative measures, the power to seek pretrial detention, the power to withdraw a charge, the power to negotiate a plea, the power to prefer an indictment and the power to appeal (see *Nelles* v. *The Attorney General of Ontario* (1989), 98 N.R. 321).

mechanism for arriving at such decisions must itself be seen to be conducive to fairness.[7]

The qualities of a fair prosecutorial decision cannot be exhaustively defined. It is accepted in Canada and elsewhere that only adequate and properly prepared cases should be prosecuted. An accused should be tried and public resources expended only if a careful investigation has revealed evidence upon which there is a real chance of conviction and where no public interest considerations dictate that the prosecution be terminated. External evaluation of the exercise of prosecutorial functions is difficult. As the *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* recognized, there must be absolute confidentiality and secrecy of the identity of persons under police investigation.[8] The need to preserve both the integrity of ongoing police investigations and fairness to those under investigation dictates that detailed public explanations often cannot be provided for prosecutorial advice given to the police.

The reasons for exercises of post-charge prosecutorial discretion should be given in open court whenever possible. If they cannot be given, or when time constraints preclude a detailed explanation, the interested observer will be left with unanswered questions. As a consequence, the decision making mechanism itself must be demonstrably able to command public confidence in its ability to be fair. The extent to which the Crown's representative is invested with independence of action to ensure his or her objectivity is an important factor in demonstrating this ability.

PROSECUTORIAL INDEPENDENCE

There are a number of facets to the concept of prosecutorial independence. In order to properly perform his or her quasi-judicial duties, the Crown Attorney must avoid being "caught up in the chase" of the police investigation. In addition, sympathy for the plight of the victim cannot be permitted to cloud the Crown Attorney's professional

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7 The importance of fair and equal treatment in the exercise of discretionary powers was recently emphasized by The Honourable Mr. Justice E. Olayinka Ayoola in his keynote address delivered at the First Conference of Commonwealth Africa Directors of Public Prosecutions (*Commonwealth Law Bulletin*, July 1991).

8 See Recommendation 37(c).

judgement. Finally, the Crown Attorney's relationship with the executive branch of government must be based on conditions of employment that guarantee all accused fair and equal prosecutorial treatment. A Crown Attorney must not be placed in a position where his or her prosecutorial decisions are, or may be perceived to be, politically influenced.

Crown Attorneys and the Police

Effective law enforcement requires a close working relationship between police and Crown Attorneys. The investigative and prosecutorial roles are complementary, but functionally distinct.[9] The Public Prosecution Service shares the commitment of investigative agencies to effective law enforcement, but in no sense are Crown Attorneys "lawyers for the police."

Subsection 4(d) of the *Public Prosecutions Act* provides that the Director of Public Prosecutions (or Crown Attorneys on behalf of the Director of Public Prosecutions) shall advise police officers in respect of investigations when the police request such assistance. In response to recommendation 37 of the *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution,* the Government of Nova Scotia has accepted the principle that police officers have the right and duty to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges in accordance with generally recognized principles of prosecutorial discretion. It is also for the police to determine whether a criminal investigation will be undertaken.

It is the view of the Public Prosecution Service that pre-charge consultation between investigators and Crown Attorneys is in the best interests of the administration of justice, especially where the charge under consideration is complex or infrequently utilized. No charge should be laid, contrary to the advice of a consulted Crown Attorney, until discussion concerning the matter has taken place between the investigator and the Crown Attorney. If there is no resolution of the disagreement at this level, the matter should be referred to a senior official of the investigating agency and the Regional Crown Attorney. Following discussion at senior levels, if the investigating agency remains

9 Recognition of the important distinction between the investigating function and the prosecuting function was the fundamental principle behind the establishment of the Crown Prosecution Service in England (*Report of The Royal Commission on Criminal Procedure* (London, 1981) pp. 146–153. *The Fourth Report of the Home Affairs Committee on the Crown Prosecution Service* (London, 1990) recently stressed the importance of maintaining this distinction.

of the view that a charge is warranted, it is the right and duty of the investigating agency to lay the charge.

Once a charge has been laid, it becomes the responsibility of the Public Prosecution Service to determine if the prosecution will proceed. This requires an initial determination of whether there are any legal impediments to the charge proceeding to trial. If a preliminary inquiry is held, it provides the Crown Attorney with a further opportunity to assess the strength of the prosecution case.[10] To prepare the case for presentation in court, and discharge his or her obligations to the court and the defence, it is sometimes necessary for the Crown Attorney to request investigative assistance from the police.

Crown Attorneys and Victims

A criminal or provincial offence prosecution seeks to redress a public, rather than private, wrong. Accordingly, Crown Attorneys do not represent the private interests of individual victims of crime. The public duty of the Crown Attorney requires that he or she balance the interests of the victim, the offender, and society. Crown Attorneys do have a responsibility to seek to ensure that those most directly affected by criminal activity are treated with compassion and respect by the criminal justice system. The Public Prosecution Service is developing a close working relationship with the new Victims' Services Division of the Department of Attorney General and looks forward to an expansion of the services that the Department of Attorney General will be able to offer to the victims of crime.

Crown Attorneys and the Executive Branch of Government

Prosecutorial independence demands a particular state of mind or attitude in the exercise of prosecutorial functions.[11] It also requires a status or relationship with the executive branch of government resting on objective conditions or guarantees. In performing all of his or her important functions the Crown Attorney must be free from and be seen to be free from external pressure, whether exerted through promises of reward or the menace of disfavour.

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10 *R.* v. *Skogman* (1984), 41 C.R. (3d) 1 (S.C.C.)

11 See Maloney, A., "The Supreme Court of Canada and the Role of Crown Counsel" [1980] 1 *Supreme Court Law Review* 473.

The test for prosecutorial independence is whether the prosecutor may be reasonably perceived as independent. The first essential condition of prosecutorial independence is security of tenure. A prosecutor should be removed from his or her position only for cause related to the capacity to perform prosecutorial functions. The second essential condition of prosecutorial independence is financial security. The right to salary and pension should be established by law and not subject to arbitrary interference by the executive. The final essential condition of prosecutorial independence is institutional independence with respect to matters of administration bearing directly and immediately on the exercise of the prosecutorial function.

The *Public Prosecutions Act* contains a number of provisions establishing a relationship between the Director of Public Prosecutions and the executive branch of government which rests on objective guarantees of independence. The Director of Public Prosecutions may only be removed from office for cause by resolution of the House of Assembly.[12] The *Public Prosecutions Act* also provides that the Director of Public Prosecutions shall be paid the same salary as the Chief Judge of the Provincial Court.[13] This ties the Director of Public Prosecutions to a right to salary established by law which is not subject to arbitrary interference by the executive. The *Public Prosecutions Act* also confers on the Director of Public Prosecutions the status of deputy head.[14] This gives the Director of Public Prosecutions a measure of institutional independence with respect to matters of administration. The Act enhances this administrative independence by providing that all Crown Attorneys shall be appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions after a competition.[15]

The relationship between the Crown Attorneys of the Public Prosecution Service and the executive branch of government rests on a number of conditions of employment which guarantee independence and the appearance of independence. Security of tenure rests on

12 *Public Prosecutions Act*, s.5(2).

13 *Public Prosecutions Act*, s.5(1)(e).

14 *Public Prosecutions Act*, s.5(1)(d).

15 *Public Prosecutions Act*, s.12.

guarantees contained in the *Civil Service Act*. A Crown Attorney can only be suspended or dismissed by the Director of Public Prosecutions in accordance with the regulations of the *Civil Service Act*. Only the Director of Public Prosecutions can lay off a Crown Attorney or terminate the services of a Crown Attorney, and this can only be done in accordance with the regulations of the *Civil Service Act*.

An essential condition of prosecutorial independence is financial security. While the *Public Prosecutions Act* ties the salary of the Director of Public Prosecutions to a process that is not subject to arbitrary interference by the executive, Crown Attorneys do not have the same guarantee. A process for the determination of Crown Attorney salaries that is fixed by law and similar to that which guarantees the independence of the Director of Public Prosecutions would enhance the appearance of independence of the entire Public Prosecution Service. Subsection 2(c) of the *Public Prosecutions Act* declares that the purpose of the Act is to ensure fair and equal treatment in the prosecution of offences by providing for the independence of the Public Prosecution Service. Until an independent process for determining Crown Attorney salaries is in place, this statutory purpose will not be fully realized.

Administration of the Public Prosecution Service

The administrative regime under which the Public Prosecution Service operates is described in detail elsewhere in this report. The Public Prosecution Service is a division of the Department of Attorney General and there is a close working relationship between the head office staff of the Public Prosecution Service and the head office staff of the Department of Attorney General. Finance, personnel, communications, and management information support services are all provided to the Public Prosecution Service by staff of the Department of Attorney General.

Management of the Department of Attorney General is the responsibility of the department's Senior Management Committee, which consists of representatives of the various divisions of the department, including the Public Prosecution Service. This committee recommends to the Attorney General policies and priorities in relation to the department's management and operation. The committee does not consider or discuss individual prosecutions conducted by the Public Prosecution Service.

The Senior Management Committee of the Department of Attorney General has provided wise counsel, encouragement and valuable administrative assistance to the Public Prosecution Service throughout the period covered by this report. The support of the Deputy Attorney General has been a crucial factor in the creation and development of an independent Public Prosecution Service in Nova Scotia. In his relations with the Director of Public Prosecutions, the Deputy Attorney General has always demonstrated support for the independence of the Public Prosecution Service.

The budget of the Public Prosecution Service is part of the budget of the Department of Attorney General. As the minister responsible for the Public Prosecution Service, the Attorney General represents it in Cabinet when allocations of funds are made. The Director of Finance of the Department of Attorney General, who reports directly to the Deputy Attorney General, is responsible for funds allocated to the Public Prosecution Service. The Law Reform Commission of Canada has recommended at the federal level that the allocation of funds be an internal matter within the office of the Director of Public Prosecutions.[16]

The sharing of support services and resources with the Department of Attorney General has resulted in a close physical proximity between the head office of the Public Prosecution Service and the head office of the Department of Attorney General. The Office of the Director of Public Prosecutions, the Appeals Branch, the Special Prosecutions Unit, and the Office of the Regional Crown Attorney (Halifax Region) are located on the 7th and 8th floors of 5151 George Street in Halifax. These physical arrangements permit the Public Prosecution Service to function as a self-contained unit and to provide the public with clearly designated reception areas. They represent the minimum degree of physical separation from the Department of Attorney General compatible with an appearance of independence.

In his inaugural annual report, the first holder of the office of Commonwealth D.P.P. for Australia, Ian Temby, emphasized the importance of both the reality and appearance of independence from political involvement. Mr. Temby stated:

> Independence is of prime importance. So is the appearance of independence. Thus the Central Office of the D.P.P. has been established

16 Working Paper 62, p.59.

in premises close to but physically separate from the Attorney General's Department.

In Working Paper No. 62, *Controlling Criminal Prosecutions: The Attorney General and the Crown Prosecutor*, the Law Reform Commission of Canada referred to this statement and concluded:

> We believe it would be desirable if the office of the Director of Public Prosecutions were physically separate from the Attorney General's Department. The potential interaction between policy making and prosecution functions would thereby be reduced, and the appearance of independence would be enhanced.

Institutional independence is an essential condition of prosecutorial independence. There is a core area of matters fundamental to prosecutorial independence which must fall within the exclusive or delegated authority of the Director of Public Prosecutions. Within this area are matters relating to the assignment of Crown Attorneys to specific cases and the general supervision of prosecuting functions. Beyond the core area, it is difficult to define with precision the degree of control over operating budgets and personnel and administrative policies required to ensure institutional independence. The administrative arrangements under which the Public Prosecution Service currently operates confer on the Director of Public Prosecutions authority over matters in the core area. They also provide the Public Prosecution Service with significant input with respect to matters beyond the core area. To date, they have not posed any operational difficulties. Whether they provide the most desirable degree of institutional independence will be reviewed on an ongoing basis.

Malicious Prosecution Suits

The possibility of being sued for malicious prosecution can adversely affect the independence of Crown Attorneys. This fact has long been recognized by the courts in the United States.

> The office of public prosecutor is one which must be administered with courage and independence. Yet how can this be if the prosecutor is made subject to suit by those whom he accuses and fails to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. . . .

> The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office. The work of the prosecutor would thus be impeded, and we would have moved away from the desired objective of stricter and fairer law enforcement.[17]

The American position that public prosecutors should be immune from civil liability has not been accepted by the Supreme Court of Canada. In *Nelles* v. *Attorney General of Ontario*[18] the Court concluded that the policy considerations in favour of absolute immunity must give way to the right of a private citizen to seek a remedy when the Crown Attorney Acts maliciously in fraud of his or her duties with the result that damage is caused to the victim. The tort of malicious prosecution requires not only proof of an absence of reasonable and probable cause for continuing the prosecution but also proof of an improper purpose or motive. The Court reasoned that the inherent difficulty in proving a case of malicious prosecution combined with the mechanisms available within the system of civil procedure to weed out meritless claims is sufficient to ensure that Crown Attorneys will not be hindered in the proper execution of their public duties. Madame Justice L'Heureux-Dube did not agree with this conclusion. Her Ladyship pointed out that Crown Attorneys are often faced with difficult decisions in the public interest as to whether to proceed in matters which come before them and their freedom of action is vital to the effective functioning of our criminal justice system.

To avoid the chilling effect on the proper exercise of prosecutorial discretion that the prospect of civil liability can give rise to, it is imperative that the Department of Attorney General develop a written policy clearly stating the support available to Crown Attorneys when they perform their public duties. Crown Attorneys should be able to make difficult decisions in the public interest free from concern that they are risking personal financial ruin.

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17 *Pearson* v. *Reed*, 6 Cal. App. 2d 277, 44 P. 2d 592 (1935), referred to with approval by the United States Supreme Court in *Imbler* v. *Pachtman*, 424 U.S. 493 (1976). Public prosecutors in Scotland are also absolutely immune from civil liability (*Hester* v. *MacDonald*, [1961] S.C. 370).

18 (1989), 98 N.R. 321.

PROSECUTORIAL ACCOUNTABILITY

The *Public Prosecutions Act* ensures the accountability to the legislature of the Attorney General in his capacity as chief public prosecutor. Section 6 of the Act provides that the Attorney General is responsible for the Public Prosecution Service and is accountable to the Assembly for all prosecutions. This ensures that ultimate control over prosecutions remains in the hands of an elected official. By virtue of subsection 6(e), the Attorney General is entitled to exercise all statutory functions with respect to prosecutions after consultation with the Director of Public Prosecutions. During the period covered by this report the Attorney General has not had occasion to exercise his authority under this provision.

The Department of Attorney General has established procedures to notify the Attorney General when the Director of Public Prosecutions exercises statutory functions on behalf of the Attorney General or when the Public Prosecution Service is conducting prosecutions of public importance or interest which are likely to engage the Attorney General's responsibility to the House of Assembly. When the Director of Public Prosecutions has received a request to exercise a statutory function on behalf of the Attorney General, the Deputy Attorney General is advised in writing. This provides the Deputy Attorney General and the Attorney General with an opportunity to consider whether the Attorney General wishes to give non-binding advice to the Director of Public Prosecutions, pursuant to s.6(c) of the *Public Prosecutions Act*.

Following the exercise of a statutory function by the Director of Public Prosecutions, the Deputy Attorney General is informed in writing. This allows the Deputy Attorney General and the Attorney General an opportunity to determine whether it is appropriate for the Attorney General to issue binding instructions or guidelines to the Director of Public Prosecutions in a particular prosecution, pursuant to s.6(b) of the *Public Prosecutions Act*. When instructions are issued to the Director of Public Prosecutions they must be published in the Royal Gazette, except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice. In such a case, the Director of Public Prosecutions is required to publish as much information concerning the particular instructions or guidelines as the Director considers appropriate in the next annual report to the House of Assembly. During the time period covered by this report, no binding instructions were issued to the Director of Public Prosecutions pursuant to s.6(b) of the *Public Prosecutions Act*.

In addition to instructions and guidelines relating to particular prosecutions, s.6(a) of the *Public Prosecutions Act* provides that the Attorney General may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions. In the spring of 1991, pursuant to this provision, the Attorney General issued a protocol providing guidance to Crown Attorneys with respect to cases involving persons with special communication needs.[19]

Subsection 4(e) of the *Public Prosecutions Act* also confers authority on the Director of Public Prosecutions to issue general instructions or guidelines to Crown Attorneys in respect of all prosecutions or a class of prosecutions. Pursuant to this provision, directives with respect to appeals to the Court of Appeal under Part XXI of the *Criminal Code*[20] and the post-charge screening pilot project and standards for the exercise of prosecutorial discretion[21] were issued during the period covered by this report.

All Crown Attorneys of the Trials Branch of the Public Prosecution Service are accountable to their Regional Crown Attorney, to the Chief Crown Attorney (Trials) and, ultimately, to the Director of Public Prosecutions. The Crown Attorneys in the Appeals Branch of the Public Prosecution Service are accountable to the Chief Crown Attorney (Appeals) and, ultimately, to the Director of Public Prosecutions. When Chief Crown Attorneys, Regional Crown Attorneys or Crown Attorneys exercise statutory functions as designates of the Attorney General or the Director of the Public Prosecutions, they are required to advise the Director of Public Prosecutions. They are also requested to advise the Director of Public Prosecutions of cases of particular public importance or interest.

THE FATALITY INQUIRIES ACT

An important aspect of the work of Crown Attorneys relates to the *Fatality Inquiries Act*.[22] This provincial legislation imposes two

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19 See Appendix C.

20 See Appendix C.

21 See Appendix C.

22 R.S.N.S., 1989, c.164.

responsibilities on Crown Attorneys. Section 10 of the Act states that the Attorney General or the "prosecuting officer of the county" in which a fatality report is filed may direct a judge of the provincial court to hold an inquest respecting the cause of the death. Section 13 of the *Fatality Inquiries Act* provides that:

> a prosecuting officer or any counsel appointed by the Attorney General to act for the Crown may attend the inquest and may examine witnesses called at the inquest.

One of the primary purposes of the *Fatality Inquiries Act* is to determine whether the death resulted from an unlawful act or culpable negligence on the part of any person. In *Starr et al.* v. *Houlden et al.*[23] the Supreme Court of Canada held that the *Constitution Act, 1867* does not permit a province to utilize the inquiry process to investigate the alleged commission of specific criminal offences by named persons. This decision will necessitate an examination of the constitutionality of the scope of the *Fatality Inquiries Act*. The terminology utilized in this legislation is also outmoded. The expressions "prosecuting officer" and "prosecuting officer of the county" should be replaced by "Crown Attorney" and "Regional Crown Attorney."

The *Fatality Inquiries Act* does not clearly delineate the role of the Crown Attorney at a death inquiry. Indeed, the legislation does not expressly require the presence of a Crown Attorney. It also does not provide that the Crown Attorney shall decide what witnesses to call. While consistent procedures have developed in practice, there is a need for statutory direction with respect to a number of important issues. In what circumstances should a death inquiry be called? Who should have standing at the hearing?

It is generally accepted that the role of the Crown Attorney at a death inquiry is to call all the available evidence necessary to disclose the material circumstances attending the death. This requires an independent assessment of all the available information.[24] Whenever a government agency or department's actions are to be scrutinized at a death inquiry, it is important that the counsel conducting the inquiry be independent of government. An independent Public Prosecution Service is ideally placed to assume this role.

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23 (1990), 68 D.L.R. (4th) 641, 55 C.C.C. (3d) 472.

24 See the *Report of the Aboriginal Justice Inquiry of Manitoba* (1991), Vol 2, p.86.

CONCLUSION

The primary duty of the Public Prosecution Service is to effectively and efficiently conduct prosecutions on behalf of the public before the courts of Nova Scotia. During the period covered by this report, this duty was consistently discharged with dedication throughout the province. Often it had to be discharged under less than ideal conditions. Frequently, it required evening and weekend work on the part of Crown Attorneys and support staff.

Some prosecutions were conducted under the glare of public and media attention, more often the case was of interest only to those directly affected by it. While it is important that high profile prosecutions be conducted in a manner that instills public confidence, it is crucial that appropriate prosecutorial standards be maintained in every case. There is no such thing as an "unimportant" prosecution. For this reason, the Public Prosecution Service Management Council concluded that no purpose would be served by referring to specific prosecutions in this report.

The *Charter of Rights and Freedoms* has revolutionized criminal law and procedure in Canada. A number of precedent-setting judicial decisions interpreting the *Charter* were reached in prosecutions conducted by the Public Prosecution Service during the reporting period. The constitutional requirements mandated by the *Charter* have potential ramifications in virtually every prosecution. They have materially improved the quality of justice in Nova Scotia, but they have also increased and complicated the work of Crown Attorneys.

The legal and advocacy issues confronting the Public Prosecution Service during the period covered by this report were varied and challenging. The criminal justice system is struggling to respond more sensitively to the victims of sexual and domestic abuse. Traditional use of the prosecution process as a response to social and cultural conflicts is being questioned. These developments have had, and will continue to have, a very real impact on the Public Prosecution Service.

The enactment of the *Public Prosecutions Act* demonstrated Nova Scotia's commitment to the principle that prosecuting services can best be provided by independent full-time Crown Attorneys. During the first year of its operation, the Public Prosecution Service developed a management structure that stresses operational independence while maintaining public accountability. Improvements were made in the

process for appointing part-time Crown Attorneys and in the procedure for dealing with complaints. A post-charge screening project was launched which will provide the information required to make responsible decisions enhancing the criminal justice system in Nova Scotia. These accomplishments will provide a firm foundation for further improvements in the delivery of prosecution services during the coming year.

ORGANIZATION OF THE PUBLIC PROSECUTION SERVICE

THE ATTORNEY GENERAL

The Attorney General of Nova Scotia has the superintendence of all matters connected with the administration of justice in the province not within the jurisdiction of the Dominion of Canada. The Attorney General's functions and powers include legislative responsibility for affairs and matters relating to courts and prosecutions. He or she is the Law Officer of the Crown and the chief public prosecutor.

The Attorney General is the Minister responsible for the Public Prosecution Service and is accountable to the House of Assembly for all prosecutions conducted on behalf of the Province. The *Public Prosecutions Act* permits the Attorney General to consult with members of the Executive Council regarding general prosecution policy but not with respect to a particular prosecution. Where the Attorney General exercises any of the statutory functions of the Attorney General pursuant to the *Criminal Code*, such as consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, the Attorney General must first consult with the Director of Public Prosecutions.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Pursuant to the *Public Prosecutions Act*, the Director of Public Prosecutions is the head of the Public Prosecution Service, which conducts all prosecutions independently of the Attorney General on behalf of the Crown in right of Nova Scotia. This includes the prosecution of offences under the *Criminal Code*, certain other federal statutes (i.e. *Migratory Birds Convention Act, Canada Shipping Act Small Vessel Regulations*, and *Explosives Act*), and most offences under provincial statutes. Prosecutions for violations of other federal statutes, including the *Narcotic Control Act*, the *Food and Drugs Act*, and the *Income Tax Act*, are conducted by Agents of the Attorney General of Canada.

Cities and towns in the province are responsible for the prosecution of certain provincial statute violations which occur within their boundaries. These include violations of the *Liquor Control Act* and the *Motor Vehicle Act*. Agreements have been reached between the Department of Attorney General and certain towns whereby Crown

Attorneys undertake the conduct of such prosecutions on behalf of these municipalities. In return, fees are billed for services provided on a *per annum* basis to each municipality.

The Director of Public Prosecutions must be a Canadian barrister of at least 10 years' standing. If from another province, he or she must become a practising member of the Bar of Nova Scotia within one year of appointment. The appointment is made by the Governor in Council following consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers' Society. The incumbent holds office during good behaviour. The Director of Public Prosecutions has the status of a deputy head and has authority to deal with issues relating to the employment status of members of the Public Prosecution Service.

The Director of Public Prosecutions, as the lawful Deputy of the Attorney General with respect to prosecutions under the *Criminal Code* and under the *Summary Proceedings Act,* can exercise any of the powers conferred upon the Attorney General. These include the preferring of direct indictments or consenting to the laying of a new information following a discharge of an accused at a preliminary inquiry. As agents of the Attorney General, Crown Attorneys may also invoke certain powers conferred by the *Criminal Code,* such as initiating an appeal from an acquittal or sentence or entering a stay of proceedings. When these powers are exercised in indictable matters, a report is provided to the Attorney General through the office of the Deputy Attorney General. This places the Attorney General in a knowledgeable position should any of these decisions be questioned in the House of Assembly or should the Attorney General wish to exercise any of the powers conferred by Section 6 of the *Public Prosecutions Act.*

PUBLIC PROSECUTION SERVICE MANAGEMENT COUNCIL

The Public Prosecution Service Management Council comprises the Regional Crown Attorneys, the Assistant Chief Crown Attorney (Trials), the Chief Crown Attorney (Trials), the Chief Crown Attorney (Appeals) and the Director of Public Prosecutions. The Council usually meets on a monthly basis to coordinate and deal with administrative, policy and management issues affecting the Public Prosecution Service.

To assist the members of the Public Prosecution Service Management Council in the discharge of their responsibilities and in the

development of new policy initiatives, the Council from time to time invites other persons involved in the criminal justice system to meet with the Council. In May of 1991, the members of the Council met with Ms. Carol Wackett and Ms. Maureen Meek of the Service for Sexual Assault Victims of Halifax to discuss ways in which Crown Attorneys might better address the concerns of victims of sexual assault as their cases proceed through the courts.

In June of 1991, Ms. Paula Simon, Coordinator of Victims' Services with the Department of Attorney General, and Ms. Kit Waters, Director of the Policy, Planning & Research Division of the Department of Solicitor General, made a presentation respecting the Family Violence Tracking project, an initiative of several provincial government departments and the R.C.M.P., which is to serve as a vehicle for obtaining timely and relevant information regarding family violence in order to aid in the measurement of the effectiveness of preventive and treatment programs. Also in June of 1991, the Council and other representatives of the criminal justice system received a preliminary report from Dr. Rhodri Evans and Dr. Barbara Clarke respecting the initial psychological effects of sexual abuse on children.

GENERAL COUNSEL

The Public Prosecution Service has one General Counsel who is located at head office in Halifax. The General Counsel provides the Director of Public Prosecutions with advice on matters of prosecutorial policy. He liaises with the Senior Advisor, Policy and Planning, Department of Attorney General, on issues relating to criminal law reform and is available to assist the Appeals Branch where necessary.

TRIALS BRANCH

The Crown Attorneys of the Trials Branch of the Public Prosecution Service are responsible for representing the Crown in the various levels of trial courts in a fair, competent and effective manner. These Crown Attorneys appear regularly in the Provincial Court, the Youth Court, the Family Court, the County Court and the Trial Division of the Supreme Court of Nova Scotia. In addition, appeals to the County Court in summary conviction matters are conducted by Crown Attorneys of the Trials Branch.

The Chief Crown Attorney (Trials) supervises the activities of all Crown Attorneys who appear in the trial courts of the province, and is responsible for ensuring that all prosecutions are fairly and professionally conducted in accordance with policies and guidelines issued by the Attorney General or the Director of Public Prosecutions. The budgeting of adequate resources to permit prosecutions to be efficiently carried out throughout the province is also a responsibility of this position.

As of August 31, 1991, there were 54 Crown Attorneys in the Trials Branch, complemented by a roster of 37 lawyers in private practice who have received appointments as Crown Attorneys, pursuant to the *Public Prosecutions Act*, and who act on a part-time basis at the request of a member of the Public Prosecution Service.

The Assistant Chief Crown Attorney (Trials) assists the Chief Crown Attorney (Trials) with the supervision of all Crown Attorneys in the Trials Branch and has specific responsibility for the continuing legal education of all Crown Attorneys and the coordination and management of special projects on behalf of the Public Prosecution Service.

The Public Prosecution Service has created a middle level of management through the establishment of four prosecutorial regions. Appendix E depicts the area covered by each region. Regional Crown Attorneys are located in Kentville, Halifax, New Glasgow and Sydney. Each Regional Crown Attorney oversees the manner in which prosecution services are provided in the region. They provide management, guidance and leadership to Crown Attorneys in the region. They also deal with numerous supervisory, administrative and policy concerns within the region and liaise with Regional Crown Attorneys outside the region and with head office staff. They respond to concerns and complaints regarding the actions of Crown Attorneys and monitor and evaluate their performance. A detailed enumeration of the duties of the Regional Crown Attorney is found in Appendix D.

In Halifax Region the number of staff and courts functioning on a regular basis has resulted in the creation of the position of Associate Regional Crown Attorney. The Associate Regional Crown Attorney reports to and assists the Regional Crown Attorney and carries out assigned management duties and administrative responsibilities. As a result of this arrangement, both the Regional Crown Attorney and the Associate Regional Crown Attorney in Halifax Region are able to maintain a court caseload.

A Special Prosecutions Unit is located in the head office of the Public Prosecution Service. This unit was established in 1989 primarily to prosecute complex commercial crime cases. The Special Prosecutions Unit is currently comprised of two Senior Crown Attorneys.

APPEALS BRANCH

The Appeals Branch of the Public Prosecution Service is responsible for the preparation and argument of appeals on behalf of the Attorney General of Nova Scotia before the Appeal Division of the Supreme Court of Nova Scotia and the Supreme Court of Canada. The Chief Crown Attorney (Appeals) supervises the activities of four Crown Attorneys in the branch who, in addition to the Chief Crown Attorney (Appeals), are individually responsible for their respective caseload of appeals. These appeals include appeals by an accused from either his or her conviction or sentence or both and appeals initiated by the Crown from either an acquittal or a sentence imposed by the trial court. All appeals in indictable offences under Part XXI of the *Criminal Code* and summary conviction appeals to the Appeal Division under ss.830 and 839 of the *Criminal Code* arising out of proceedings under the *Criminal Code* or provincial regulatory statutes are dealt with by the Crown Attorneys in the Appeals Branch.

The Chief Crown Attorney (Appeals) is responsible for the overall supervision of the Appeals Branch. In addition to preparation and argument of appeal cases, the Chief Crown Attorney (Appeals) is responsible for receiving and reviewing recommendations for appeal submitted by the Regional Crown Attorneys, reporting the recommendations for appeal to the Director of Public Prosecutions, preparing notices of appeal in those recommendations for appeal approved by the Chief Crown Attorney (Appeals) and arranging for service of the notices of appeal, arranging for the preparation of appeal books in Crown and prisoner appeals, attending weekly Appeal Division Chambers on motions to set hearing dates for appeals, extending time for service of notices of appeal, bail pending appeal, and receiving the directions of the Court in specific appeal cases. The Chief Crown Attorney (Appeals) chairs meetings of the Appeals Branch held on a monthly basis for the purpose of distributing appeal cases set for hearing and discussing specific recommendations for appeal, policy directions, and other matters affecting the Appeals Branch.

ADMINISTRATIVE SUPPORT

Administrative services for the Public Prosecution Service are provided by the Administration Division of the Department of Attorney General. The Financial Management Section of the department provides services related to budget management and control, revenue and financial services, and support for strategic planning. This section is also responsible for inventory management and control.

The Personnel Services Division of the Department of Attorney General is responsible for providing comprehensive support services to the Public Prosecution Service in a variety of areas including human resource planning, recruitment and selection, continuing education, employee relations, performance appraisal, compensation and salary administration, and personnel and payroll records.

The Department of Attorney General law library is an extremely valuable resource for the Public Prosecution Service. It provides research and information facilities to support all aspects of the delivery of prosecution services. The Public Prosecution Service is also able to call upon the services of the Communications Officer of the Department of Attorney General.

The Public Prosecution Service is increasingly making use of the services provided by the Management Information Systems Section (M.I.S.) of the Department of Attorney General. The Justice Orientated Information System (J.O.I.S.) being developed by the Departments of Attorney General, Solicitor General and Community Services has the potential to provide management information that will significantly improve the ability of the Public Prosecution Service to deliver prosecution services in a more efficient and effective manner.

BRANCH REPORTS

TRIALS BRANCH

Report of the Chief Crown Attorney (Trials)

The activities of Crown Attorneys functioning in the Trials Branch of the Public Prosecution Service have the most direct impact upon members of the public. Following the completion of a police investigation and the laying of a charge, the Crown Attorney reviews the material gathered by the police and if satisfied that sufficient evidence exists to warrant the charge proceeding and that there are no public interest factors in favour of terminating the proceedings, the Crown Attorney conducts the prosecution of the charge in the trial court.

While the most visible aspect of the Crown Attorney's role is in the presentation of the case in court, this aspect occupies less than half of a Crown Attorney's time. When not in court, Crown Attorneys spend many hours preparing for upcoming court cases. Preparation may entail meetings with police investigators, meeting with witnesses, conducting legal research in relation to issues expected to arise during the trial, reviewing witness statements, reviewing exhibits, preparing for direct examination of witnesses called by the Crown, preparing for cross-examination of witnesses called by the defence and preparing for closing argument. Crown Attorneys are regularly contacted by police officers requesting legal advice in relation to investigations which may lead to criminal charges.

Crown Attorneys are often called upon by members of the public to answer questions concerning the criminal justice system, generally, or a specific case in which they have an interest. Crown Attorneys will, on occasion, address school classes or community groups on criminal law issues. Such tasks are undertaken by Crown Attorneys to foster greater understanding of and public support for the Canadian criminal justice system.

Crown Attorneys have administrative duties to perform while not in court. There are forms to be filled out relating to the number of cases handled, the results of cases, appeal recommendations and so forth. Where pilot projects are conducted there are additional forms to be completed.

Crown Attorneys must keep abreast of developments in the criminal law. During the past 10 years, this task has become increasingly more difficult. In addition to the introduction of the *Young Offenders Act* and the *Canadian Charter of Rights and Freedoms*, there have been numerous changes to the *Criminal Code*. Substantial changes to the *Code* in relation to sexual assault occurred in 1983 and 1988 and in relation to arson in 1990. Decisions from appeal courts and the Supreme Court of Canada are released on an ongoing basis. Those decisions are forwarded to Crown Attorneys who must find time to read and absorb the effect of each decision.

In addition to changes in the law resulting from legislative amendments and case decisions, Crown Attorneys must be familiar with Department of Attorney General directives governing their conduct. Such directives often place additional time demands on Crown Attorneys.

A routine day in Provincial Court will include between six and ten cases for trial. Court normally begins at 9:30 a.m. The average trial will involve two to five witnesses. Prior to court, the Crown will attempt to speak to each witness on each case to prepare them for giving their testimony (some of whom may have been seen prior to the day of trial). Most persons charged will be represented by a defence counsel who may wish to discuss the case and a possible plea negotiation with the Crown prior to court. In addition, persons arrested overnight or over the weekend and held in custody will be present at court for arraignment. The Crown must review each arraignment file, review the charges, make any necessary corrections, review the accused's record, decide whether to agree to his or her release, meet with defence counsel to provide disclosure and discuss the case.

As the day proceeds, the Crown Attorney must be prepared to deal with each situation which arises in court. To do so the Crown Attorney must always be abreast of the developments in the law of evidence, the *Charter of Rights and Freedoms*, criminal procedure and substantive criminal law.

With court presentations completed, the out-of-court duties of the Crown begin again. The first such duty after the day's court appearances are completed will be to review each case with a view to a possible recommendation of appeal.

A Special Prosecutions Unit, consisting of two Senior Crown Attorneys and a secretary, is located in the head office of the Public Prosecution Service in Halifax. The Unit is available to respond to investigations carried out by the Commercial Crime Section of the R.C.M.P. In addition, the Unit may assist municipal police departments which conduct fraud or other major investigations, where a Regional Crown Attorney has requested the involvement of the Unit.

The work of this Unit can involve extensive pre-charge consultation with police investigators as they assemble and assess documentation which may support a complex prosecution. Members of the Unit often work closely with forensic accounting experts whose advice and testimony can be essential to an effective presentation of the Crown's case. Members of the Special Prosecutions Unit have conducted criminal proceedings in each of the four regions in the province during the period covered by this report.

During the period covered by this report, the work of the Chief Crown Attorney (Trials) has been greatly aided by the establishment of a regionalized middle level of management within the Trials Branch of the Public Prosecution Service. This has facilitated input from the various regions of the Public Prosecution Service into policy development. The regular meetings of the Public Prosecution Service Management Council have allowed full debate concerning policies under consideration or development and administrative matters which affect Crown Attorneys. Communications between all levels of the Public Prosecution Service have improved.

The Assistant Chief Crown Attorney (Trials) has devoted a considerable portion of his time to the coordination and development of programs of continuing legal education for Crown Attorneys, both in the Trials and Appeals Branches. The most significant of these programs is the annual education conference sponsored by the Public Prosecution Service in September of each year.

As well, the Assistant Chief Crown Attorney (Trials) has participated, on behalf of the Public Prosecution Service, on the Justice Sub-Committee of the Tripartite Forum which was established following the Marshall Inquiry Report to, *inter alia*, respond to native justice issues. The Assistant Chief Crown Attorney (Trials) also played a coordinating role in the development of a protocol for the investigation and prosecution of cases involving persons with special communications needs, the first of its kind in Canada. The protocol is found in Appendix C.

Other developments have occurred within the period under review which are noteworthy. Following extensive consultations involving representatives of the Public Prosecution Service and the Legal Ethics Handbook Committee of the Nova Scotia Barristers' Society, that Society adopted a new Handbook on Legal Ethics and Professional Conduct for lawyers in Nova Scotia which, for the first time, includes a separate chapter dealing with the lawyer as prosecutor. Chapter 17 sets out the ethical responsibilities of Crown Attorneys to act fairly and dispassionately in the exercise of their prosecutorial functions, not merely to strive to obtain conviction, but to present to the court in a firm and fair manner the evidence which that Crown Attorney considers to be credible and relevant. The chapter acknowledges the unique aspects of the role of a lawyer as a Crown Attorney and attempts to strike a balance between those aspects of the conduct of the Crown Attorney which are reviewable by the disciplinary process of the Barristers' Society and those which relate to the exercise of prosecutorial discretion wherein responsibility and accountability lies with the Attorney General through the Director of Public Prosecutions.

Also noteworthy is the continuing public focus on the issue of disclosure of the Crown's case to the defence. The Public Prosecution Service recognizes that this issue is one which requires input from various segments of society including the public, the police and representatives of the defence bar. This issue was addressed by the Nova Scotia Court Structure Task Force in its report released in March 1991 wherein the Task Force recommended that in order to ensure the continued evolution and maintenance of a suitable mechanism to provide and enforce full disclosure, there should be a standing committee representing defence counsel, Crown Attorneys, the R.C.M.P., municipal police forces, and lay representatives to study the matter and make recommendations to the Attorney General from time to time. The Public Prosecution Service will take the initiative in constituting such a committee during the ensuing year. Such a committee can play a major role as the subject of disclosure to the defence undergoes further review.

The post-charge screening project being undertaken on a pilot project basis as recommended by the Marshall Royal Commission is described in detail under the heading *Policy Development and Implementation*. This initiative will improve the ability of Public Prosecution Service to assess whether charges which are not strictly necessary in accordance with the evidence or the public interest are currently being prosecuted. This pilot project concludes at the end of

1991. The results of the pilot project will be assessed and recommendations made to the Attorney General.

In closing, the professionalism and dedication of all Trials Branch Crown Attorneys and the manner in which they prepare and present cases on behalf of the Crown before the trial courts in this province must be acknowledged. As well, the Trials Branch has been particularly well served by an able and hardworking support staff. The dedication to duty which has been displayed by our secretaries, receptionists, and other clerical support staff has been exemplary.

Cape Breton Region

The Cape Breton Region consists of the four counties on Cape Breton Island, namely Cape Breton, Inverness, Richmond, and Victoria Counties. The offices of the Crown Attorneys are located in Sydney and Port Hawkesbury. There are eight full-time Crown Attorneys and ten per diem Crown Attorneys. The support staff in the region consists of three full-time secretaries and one part-time secretary.

Cape Breton County—Six full-time Crown Attorneys (including the Regional Crown Attorney) and eight part-time (per diem) Crown Attorneys serve Cape Breton County. Since October 1, 1991, three of the full-time Crown Attorneys have assumed additional duties in Victoria County.

The Crown Attorneys each have specific responsibilities with respect to the conduct of criminal cases and provincial statute offences in the Provincial Courts operating in the county. The Provincial Court sits four times per week in Sydney, three times per week in Glace Bay, and once per week in each of New Waterford, North Sydney, and Sydney Mines. Court for the latter two municipalities is presently held in Sydney due to inadequate facilities in their respective locations. Grave concerns about the adequacy of the New Waterford courtroom have been expressed but court sessions continue to be held there. The Provincial Court also sits one-half day per month in the Town of Louisbourg.

In addition to regularly scheduled Provincial Courts, the Crown Attorneys must also service the Youth Court for 12- to 16-year-olds, which is held in the Family Court at the Provincial Building at Sydney. Cases are set down as the schedule of the Court permits but the presence of a Crown Attorney is required on at least two or three days of every week. Crown Attorneys must also attend Family Court to prosecute cases of spousal assault.

One Crown Attorney has specific responsibility for all criminal cases heard by either of the two County Court Judges in the County. This work involves not only the conduct of criminal trials but also the conduct of all appeals of summary conviction matters. Appeal work is extremely time consuming as it involves reviewing the transcript of each trial appealed, researching the applicable law, and preparing comprehensive briefs. The County Court also holds bail review hearings which the Crown Attorney in question must either conduct or respond to.

There are four sittings per year (February, April, June, October) of the Supreme Court in Cape Breton County. In two of the past three years, Chief Justice Constance Glube has granted Crown requests for one additional term in November to deal with a backlog of criminal cases. Unfortunately, the availability of the November term is dependent upon the pressures of the docket of civil cases awaiting trial.

The backlog of criminal cases is such that the existence of the November term is a minimum requirement. As of July 31, 1991, there were 35 cases awaiting trial in Supreme Court. The earliest available trial dates for any of these cases is during the February, 1992 term of the Court. Only six to eight cases can be heard during a single term. By February, 1992, all cases committed for trial between July 31, 1991 and January 31, 1992 will have been added to the 35 cases presently on the docket.

The preparation for and presentation of cases for Court comprises only one segment of the work of a Crown Attorney. The other major area of responsibility is the provision of legal advice to the various police agencies in the jurisdiction. This is a daily requirement as police regularly require advice on a variety of legal questions ranging from the adequacy of evidence for a particular charge to the precise wording of the charge. Crown Attorneys are also available for after-hour and week-end consultation.

In Cape Breton County, there are three R.C.M.P. detachments and seven municipal police departments. Those municipalities with their own police departments must provide their own prosecutors for cases involving infractions of provincial statutes such as the *Motor Vehicle Act* or the *Liquor Control Act*. In areas policed by the R.C.M.P., however, Crown Attorneys employed by the Public Prosecution Service must prosecute all such cases. Crown Attorneys must prosecute all *Criminal Code* charges emanating from all ten police agencies.

The volume of cases can, therefore, be significant. In the first six months of 1990, the Crown Attorneys office opened 1,382 files. The same period in 1991 saw 1,750 files being opened, for an overall increase of 20 per cent.

Three full-time secretaries work in the Sydney Office. One additional secretary is urgently required.

Reference has already been made to the fact that the caseload in Cape Breton County was up 20 per cent per unit in the first half of 1991 compared to the first half of 1990. Because this office has now directly assumed the conduct of the caseload in Victoria County, an additional strain has been placed on support staff. All files and telephone inquiries previously handled by the part-time Crown Attorney in Victoria County are now handled by the Sydney office.

Already noted is the fact that the Regional Crown Attorney is based in the Sydney office. Since his appointment in August 1990, the office has in effect become regional, handling inquiries from all four counties in Cape Breton instead of just one.

In addition, the Regional Crown Attorney has more management responsibilities than was previously the case for the Prosecuting Officers in the respective counties. The Regional Crown Attorney, for example, now plays a much more direct role in dealing with citizen inquiries and complaints regarding various prosecutions.

Despite a dramatic increase in workload, there has been no increase in the number of support staff. This is a situation which cannot continue if the public is to get the level and quality of service they expect and deserve.

Richmond and Inverness Counties—Two full-time Crown Attorneys and two per diem Crown Attorneys serve Richmond and Inverness Counties from the Port Hawkesbury office, which is located in the Central Trust Building, Reeves Street, Port Hawkesbury.

Crown Attorneys in Port Hawkesbury must service the Provincial Court which sits there on Monday of each week. In addition, they must cover Provincial Court on Wednesday of each week when it sits alternately in either Arichat or St. Peter's. Every third Tuesday, a Crown Attorney must travel to Cheticamp, Inverness County, for the regular sitting of the Provincial Court in that location. In recent years, the Provincial Court has frequently sat on Fridays to deal with a backlog of cases.

As in other counties, the Crown Attorneys must conduct any criminal trials in County Court, where that mode of trial is chosen by the accused person. So too, must summary conviction appeals and bail review hearings be conducted in the County Court as the need arises.

The Supreme Court sits twice a year in Arichat, Richmond County, the first two weeks in June and November. Depending upon the number of cases on the docket, this commitment can be extremely difficult to meet.

Family Court (for spousal assaults) and Youth Court (for 12 to 16 year olds), held on Tuesday of each week in either Port Hawkesbury or Arichat, is also the responsibility of the Port Hawkesbury office.

Over and above their court assignments, Crown Attorneys in Richmond and Inverness Counties must be available to provide legal advice to five detachments of the R.C.M.P.

Victoria County—Until October , 1991, Victoria County will be serviced by a part-time Crown Attorney, who is remunerated on a per diem basis. This individual is responsible for prosecuting all *Criminal Code* and Provincial statute offences heard in the Provincial Court. In Victoria County, the Provincial Court sits on Friday of each week, alternating between Ingonish and Baddeck.

The part-time Crown Attorney in Victoria County is also responsible for any cases which progressed to the Supreme and County Courts. This responsibility includes not only the actual in-court prosecutions but also all administrative detail connected with them. Thus, scheduling, witness arrangements, and to provision of advice to police are all part of the job. He is also responsible for Family Court (spousal assault) prosecutions and any Youth Court prosecutions as the need arises.

While all these activities are time consuming in themselves, the problem is aggravated by the geography of the county. In particular, the problem of servicing the Ingonish Court is aggravated by the fact that Ingonish is approximately a one-and-a-half hour drive from the nearest major centre.

Hopefully, the reader now has an overall impression of the scope of the work done by members of the Public Prosecution Service in the Cape Breton Region. Crown Attorneys deal with a broad range of situations, from speeding offences under the *Motor Vehicle Act* to

shocking murders under the *Criminal Code*. The Crown Attorney is expected to be sensitive to the victim and at the same time fair to the accused.

Yet, most Crown Attorneys derive a great deal of job satisfaction from their work and recognize the vital role they play in the administration of criminal justice. Time and again they demonstrate an unwavering professionalism in emotionally charged and contentious situations.

In a given case, the Crown Attorney may be censored by defence counsel for being too aggressive while at the same time criticized by supporters of the victim for not being aggressive enough. This is not surprising when one considers that the essence of a criminal prosecution is a series of professional decisions. The Crown Attorney decides what charge(s) will proceed, what evidence will be presented, which witnesses called, what questions will be asked, what questions will not be asked, what arguments will be made, and what sentence will be sought. Obviously, it will be a rare case when everyone is pleased with all these decisions.

The measure of the successful Crown Attorney is one of respect. People may not agree with the decisions that were made but if they are convinced that the decisions were made professionally, they will respect the decision-maker. The Crown Attorneys in the Cape Breton Region enjoy a very high degree of such respect.

Central Region

The Central Region carries on public prosecution service in the Counties of Cumberland, Colchester, Pictou, Antigonish, Guysborough, and Sheet Harbour (Halifax County). Offices of the Crown Attorneys are located in Amherst, Truro, New Glasgow, and Antigonish.

Nine full-time Crown Attorneys are responsible for conducting prosecutions in this region. Support staff consists of six full-time secretaries.

In the Central Region, there are 14 Royal Canadian Mounted Police detachments and 9 municipal police departments. The Crown Attorneys also assist and advise wildlife officers, inspectors with the Registry of Motor Vehicles, safety officers enforcing occupational health and safety standards, officials with the Department of the Environment and investigators with the Fire Marshal's Office.

Crown Attorneys in the Central Region conduct prosecutions in the Youth Court, Provincial Court, County Court, and the Supreme Court of Nova Scotia (Trial Division). Crown Attorneys also represent the Crown in any Appeals taken to the County Court by way of Summary Conviction Appeal.

In general, Crown Attorneys can be expected to appear in court Monday to Friday, with brief periods between sittings to allow for trial preparation.

During the period covered by this report, Crown Attorneys in the Central Region will have opened more than 7,700 files. Each file involves the receipt of investigative information by the Crown Attorney and, often, consultation and discussion with the investigator in order to determine a proper course of action. Most files have been carried through to prosecution and have involved interviews with witnesses, discussions with defence counsel and, in most instances, trial in a court of law.

The nine Crown Attorneys are expected to function at all court levels within the region. In addition to working 8:30 a.m. to 4:30 p.m., Monday to Friday, the Crown Attorneys are also available 24 hours a day to provide legal advice and assistance to the police. Such after-hours calls usually involve various *Criminal Code* occurrences. Conduct by Crown Attorneys under these circumstances is normally seen as part of the job requirement and not a matter of overtime.

The Crown Attorneys are also required to keep abreast of the latest changes in the *Criminal Code*, especially as they pertain to the *Young Offenders Act*, the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*. The latest decisions must be studied, understood, and acted upon.

As well as providing advice to the various police departments, Crown Attorneys regularly make presentations to schools, churches, community organizations, and other interest groups. It is felt that the offices of the Crown Attorneys should be open and accessible to the public with a view to creating greater understanding and public support for the criminal justice system.

Cumberland County—One Crown Attorney represents the Crown in this county. He has been functioning alone and under very stressful conditions for a number of years. The non-availability of two local Provincial Court Judges for an extended period of time caused

difficulties for the Crown Attorney in attempting to arrange pleas, preliminary inquiry and trial dates. When more than one court was in operation (either Youth, Provincial, County or Supreme Courts) and during vacations, court coverage became almost impossible. This has caused considerable stress and has made operation of this office very difficult.

Colchester County—Three Crown Attorneys normally handle all the court requirements in Truro and Shubenacadie. During this period, the services of one Crown Attorney were lost; he took a position in Halifax. Since this occurred during the summer period, coupled with vacation and per diem staffing problems, it caused considerable stress on support staff. Court coverage only became possible by borrowing Crown Attorneys from adjacent counties, which, in turn, caused further stress in the areas from which they were borrowed. Fortunately, this situation was remedied by a full-time replacement on August 26, 1991.

The Crown Attorneys' office in Colchester County is located in Truro. Two full-time secretaries service three full-time Crown Attorneys.

An increase in the volume of services can be expected with the establishment of a new Royal Canadian Mounted Police detachment at Enfield. This new detachment will take in parts of Hants and Halifax Counties, including the Halifax International Airport. It is anticipated that the police investigations, and court work will be dealt with in the Shubenacadie Court. This is expected to further raise staffing problems at the Truro office.

Recently, one of the full-time Crown Attorneys has had to devote all of his time on a complex, pressing issue. This matter involves the native people in the region and the challenges that are being made to the federal and provincial laws. The requirement of a full-time Crown Attorney to handle this single issue for an extended period of time has caused a staff shortage at the Truro office.

Pictou County—There are three full-time Crown Attorneys in the Pictou office. The Regional Crown Attorney is required to perform regular prosecutorial services in all levels of court, as well as carry out middle management functions required by this new position. The Regional Crown Attorney keeps in contact with all Crown Attorneys within the Central Region personally, by telephone, and by correspondence. He is also expected to attend regular monthly meetings of the Public Prosecution Service Management Council, which are held in Halifax.

The Crown Attorneys not only carry on their duties within Pictou County but also prosecute in the Tatamagouche Provincial Court and have been required to prosecute in Cape Breton, Antigonish, Guysborough, and Halifax Counties. The Crown Attorneys from Pictou County conducted a large number of criminal proceedings involving gaming machines as a result of seizures by the police on Cape Breton Island and in Mulgrave, Guysborough County. This was necessary due to a conflict of interest that prevented the case from being prosecuted by the Cape Breton Regional Crown Attorneys' Office.

Defence counsel for one of the accused in a second group of gaming machine cases gave notice of a proposed civil legal action against the Crown Attorney involved, the police departments, and the Attorney General. The action was for malicious prosecution. On the recommendation of senior staff of the Public Prosecution Service, the Crown Attorney involved withdrew from the conduct of the proceeding and the matter was taken over by another Crown Attorney.

This Notice of Intended Action against a Crown Attorney raised a whole new area of concern on the part of Crown Attorneys. Malicious prosecution suits can be used as a trial tactic. Uncertainty currently exists as to exactly what "backing" or "insurance coverage" the Crown Attorney facing an allegation of malicious prosecution can expect to receive.

Being very mindful of the recent *Nelles* decision in the Supreme Court of Canada, any uncertainty felt by a Crown Attorney as to what the department's position is can only cause the Crown Attorney to act with great caution. This may dull a Crown Attorney's zeal to prosecute a difficult case. This matter is currently under consideration by legal staff of the Public Prosecution Service and the department.

The tremendous increase of paperwork and reports required as a result of the Regional Crown Attorney carrying on middle management functions has resulted in an overload to the two permanent secretarial staff members. Since the hiring of two permanent secretaries there has been an increase of one full-time Crown Attorney well as the demands noted by the Regional Crown Attorney. The services of the two full-time secretaries were further required to provide the volumes of disclosure material that must be furnished to defence counsel, preferably prior to the defendant's first attendance at court for plea. The hiring of a third full-time secretary, or at the minimum the hiring of a part-time person, would assist in alleviating the strain.

Antigonish and Guysborough Counties—Antigonish and Guysborough Counties are normally serviced by two full-time Crown Attorneys working out of the Antigonish Crown office. The Crown Attorneys cover courts at Port Hood, Inverness County, Antigonish, Sherbrooke, Guysborough, and Sheet Harbour.

A two-month delay in the appointment of a Provincial Court Judge to replace His Honour Judge Clyde MacDonald, who was assigned to another court, made it difficult to co-ordinate arraignment and trial dates with the police departments and witnesses. Arraignments had to be delayed and trials adjourned while the services of a judge were sought. This led to great dissatisfaction being expressed by police departments and witnesses with respect to the criminal justice process. The retirement of the County Court Judge for District Number Six has also created some difficulty since the federal minister of Justice has not appointed a replacement. An accused may elect trial by County Court Judge in the first instance well aware that there is not a County Court Judge readily available to hear the case. Summary conviction appeal matters are confronted with the same difficulty. The ensuing delays lead to defence arguments based upon the *Canadian Charter of Rights and Freedoms*. Cases dismissed for these reasons severely undermine the morale of the police departments involved, the Crown, and the public perception of the justice system.

The office facilities occupied by the Crown Attorneys in the Central Region are generally adequate. In some areas there is difficulty in finding adequate storage and filing space. Greater efficiency would be given to the work process if more efficient word processing and photocopying equipment was available. The installation of facsimile copy machines in some offices has been much appreciated.

Crown Attorneys throughout the Central Region have been in regular contact with the Regional Crown Attorney. Discussions have been regularly held concerning appeals, evidentiary problems, staff, disclosure, and general operation problems.

On May 24, 1991, the first bi-annual meeting of the Crown Attorneys for the Central Region was held in Pictou County. The Director of Public Prosecutions and the Chief Crown Attorney (Trials) were in attendance at this meeting. Many of the matters previously noted in this report were discussed. This meeting provided an excellent opportunity for all the Crown Attorneys in the region to get together and to discuss many of the issues noted in this report.

All Crown Attorneys within the region are carrying out their duties ably and in a professional fashion. The stress being experienced by both Crown Attorneys and their support secretarial staff would be greatly reduced by increasing access to per diem Crown Attorneys. This could be done by increasing the per diem rate and allowing reasonable payment for trial preparation. Some secretarial staff are now working overtime at night in order to clear the backlog of written material and to keep the daily functions of the office going. Allowance should be made for hiring of further secretarial staff, or at least the taking on of part-time secretarial help to alleviate this situation. Failure to do so will only lead to stress related problems, low morale, and a lower quality of service.

Halifax Region

The Halifax Region carries the largest prosecution caseload in the province. The region is staffed by 24 Crown Attorneys (including a Regional Crown Attorney and an Associate Regional Crown Attorney) as well as 15 support staff, two of whom are casual employees.

These 24 Crown Attorneys are responsible for conducting prosecutions in the Youth Court, Provincial Court, County Court, and Supreme Court. There are normally 15 criminal courts in operation on a typical workday for the Crown Attorneys in this region to cover. On occasion there are extra sittings of the Supreme Court and Provincial Court which increase the already busy court workload of these Crown Attorneys.

There are also four per diem Crown Attorneys who carry out prosecutions on a part-time basis. Three of these prosecute almost exclusively in the Dartmouth Family Court when it sits as a Youth Court.

During the period April 1, 1990, to August 31, 1991, the Halifax Region Crown Attorneys conducted approximately 23,000 *Criminal Code* and Provincial Statute arraignments. As well, during that period of time they conducted approximately 2,700 trials in Provincial and County Court and 36 judge and jury trials in Supreme Court. In addition, Crown Attorneys prepared for many more trials than they actually conducted. It is a common occurrence for a Crown Attorney to spend large amounts of time preparing for a trial, arriving at court with witnesses prepared to testify, only to have an accused change his or her plea to guilty just before the trial is to commence.

In addition to conducting trials in Provincial Court, County Court and Supreme Court and conducting appeals in County Court, the Crown Attorneys in the Halifax Region provide ongoing advice to members of the Halifax Police Department, the Dartmouth Police Department, the Town of Bedford Police and also the Sackville, Cole Harbour, Musquodoboit Harbour and Halifax detachments of the R.C.M.P. Crown Attorneys also provide advice to Ports Canada Police, Canadian National Railway Police and military police. The 24 Crown Attorneys in this region are therefore available to provide advice to the 500 to 600 police personnel in this region. In addition Crown Attorneys provide advice to numerous provincial government enforcement officials dealing with various provincial statutes. These include Wildlife officers, Registry of Motor Vehicles inspectors, Occupational Health and Safety officers, Department of the Environment officials, Department of Finance auditors and Deputy Fire Marshals.

Crown Attorneys also make themselves available to provide advice to police after normal working hours on nights and weekends. Each week, on a rotational basis, a Crown Attorney carries a pager to receive after-hours calls for advice from the police. Providing advice to police officers and other enforcement officials is a vital and time-consuming responsibility for Crown Attorneys in the Halifax Region.

In addition to conducting prosecutions and providing advice to police, Crown Attorneys are also called upon by other government departments, schools, universities and other organizations to speak on various aspects of the criminal justice system.

The Halifax Regional Office is divided for geographic and operational reasons into four sub-offices: Halifax—George Street, Halifax—Spring Garden Road, Dartmouth, and Bedford.

The Halifax—George Street Office Crown Attorneys mainly staff the four County Courts in this region.

The Crown Attorneys at the Halifax—Spring Garden Road Office staff four to five Provincial Courts and one Youth Court. As well these Crown Attorneys usually follow their cases to trial in Supreme Court with a jury in cases where the accused elects trial by judge and jury.

The Crown Attorneys in the Dartmouth Office staff the three Provincial Courts in Dartmouth. As well they usually follow cases through to jury trials where the accused has elected trial by judge and jury.

Finally the Crown Attorneys in Bedford staff one Provincial Court and also conduct jury trials where the accused has elected trial by judge and jury.

Crown Attorneys in the Halifax Region have played a role in the development of the Public Prosecution Services' protocol for investigation and prosecution of cases involving persons with special communication needs. Protocols such as this promote a sensitivity on the part of those involved in the criminal justice system to the needs of individuals using that system. However, implementation of the protocol represents a strain on limited prosecutorial resources in the Halifax Region.

Crown Attorneys in the Halifax Region have also had the opportunity to input into the ongoing process of developing policies regarding: (1) disclosure of the Crown's case, (2) prosecution of domestic violence cases, (3) the evidentiary standard required for the continuation of a prosecution, and (4) appropriate public interest factors to be considered in stopping a prosecution.

The Halifax—Spring Garden Road and the Bedford Offices are involved in the Public Prosecution Service's post-charge screening pilot project. This pilot project requires special review of crown sheets submitted by the Halifax Police Department and also the Halifax and Sackville detachments of the R.C.M.P. This pilot project is designed to assist in developing a standardized method for early review of charges laid by the police. One of the objectives of the pilot project is that charges not supported by the evidence may be withdrawn as soon as possible. Similarly, if there appear to be public interest reasons to withdraw charges this should also be done at an early stage. Finally the effect, if any, on the prosecution caused by the failure of police investigators to consult with the Crown in advance of laying charges will be noted in this pilot project. Participation in this pilot project, while worthwhile, is nevertheless a drain on the time of already extremely busy Crown Attorneys in the Halifax Region.

Crown Attorneys have demanding and stressful jobs. Properly, there are high expectations placed upon them by witnesses, including victims, the police, and the general public.

Fortunately the Crown Attorneys in the Halifax Region are a group of dedicated professionals who take pride in their work. They are called upon to prosecute anything from summary conviction offences to

murder, robbery, sexual assault, and complicated frauds. They are also extensively involved in the important task of advising police and enforcement officers on a daily basis.

Crown witnesses expect that they will have reasonable opportunity to review their testimony with Crown Attorneys well in advance of court proceedings. Crown Attorneys do their best to accommodate this expectation, especially in relation to sexual assault victims, child witnesses, and people with special communication needs. However, the reality of the situation is that Crown Attorneys simply have a large number of cases to prepare for in the run of a week and all their time out of court cannot be used to prepare for court. Crown Attorneys have to have time to keep on top of recent developments in the law, to attend continuing legal education seminars and to advise police and other enforcement officers. It is necessary that Crown Attorney staff levels be sufficient to carry out these time-consuming tasks. It is also vital that when Crown Attorney positions are needed, either to staff new courts or to replace Crown Attorneys who have resigned, that there be no delay in creating or filling such positions.

Western Region

The Western Prosecutorial Region consists of the Counties of Hants, Kings, Annapolis, Digby, Yarmouth, Shelburne, Queens, and Lunenburg. The offices of the Crown Attorneys are located in Kentville, Digby, Yarmouth, Shelburne, Liverpool and Bridgewater. Satellite offices are located in Windsor and Middleton.

The Western Prosecutorial Region is serviced by a Regional Crown Attorney, nine full-time Crown Attorneys and 14 per diem Crown Attorneys. The support staff in the Region consists of seven full-time secretaries and one part-time secretary.

In the Western Region there are 15 R.C.M.P. detachments, nine municipal police departments, and two military police agencies. It is the responsibility of each Crown Attorney in the Region to provide legal advice and guidance to all of these police agencies as well as to various other enforcement agencies, such as Department of Natural Resources conservation officers charged with the administration of various provincial statutes.

Crown Attorneys are called upon to appear regularly in the Provincial Court, the Youth Court, the County Court and the Trial Division of the

Supreme Court. In addition, Crown Attorneys conduct on behalf of the Crown all appeals to the County Court in summary conviction matters.

In the Western Region, as a rule, there is a court session Monday to Friday every week. This does not present a problem in the counties of Hants, Yarmouth and Queens. In those counties there is only one courthouse and, therefore, one court can sit at a time requiring the services of one Crown Attorney.

In Annapolis County the Crown Attorney must attend court in Middleton, Annapolis Royal and sometimes Digby. Fortunately, the same Provincial Court judge sits in these communities and there is no problem servicing the Provincial Court. When County or Supreme Courts are sitting then, of course, a substitute must be found to assist the local Crown Attorney. The same problem arises in Digby where the courts sit in the Town of Digby and Little Brook; and in Shelburne where the courts sit in the Town of Shelburne and Barrington Passage. In Lunenburg County courts sit in Bridgewater and the Town of Lunenburg. There are two full-time Crown Attorneys for Lunenburg County and, generally speaking, there is no problem servicing the various courts in that area.

In Kings County, however, the problem of servicing the various courts is fast becoming a serious concern. In this county two full-time Crown Attorneys (including the Regional Crown Attorney) are assisted by the full-time Crown Attorneys for Hants and Annapolis Counties when there is no court in their jurisdictions and by two per diem Crown Attorneys. The courthouse has three courtrooms and the Family Court (Youth Division) sits in another facility altogether. There are days when as many as five courts sit simultaneously and it is becoming extremely difficult to ensure that there is a Crown Attorney available at all times to service all courts. The need for another full-time Crown Attorney in Kings County is apparent and this matter should be addressed as soon as possible.

By December 31, 1991, the Crown offices in the Western Region will have processed more than 7,500 files. Each of these files has been thoroughly reviewed by a Crown Attorney and, in most cases, the matters have been prepared for trial. To properly prepare a case for trial the Crown Attorney must not only read the file; he or she must also meet with the police officers, most of the witnesses, the defence lawyers; he or she must also spend a considerable amount of time researching points of law. Today, more than ever, accused persons are proceeding to trial and, as a result, the Crown Attorney finds himself or

herself actually in court more often than not. The court sittings themselves quite often occupy most, if not all, of the normal working hours. The end result of this, of course, is that the Crown Attorney finds himself or herself on an ever increasing basis preparing for trial and doing other office chores after normal working hours and on his or her own time.

This report sets out in as much detail as possible the activities of the Public Prosecution Service within the Western Region of Nova Scotia. Basically, the morale within the Public Prosecution Service in the Western Region is very high. The Crown Attorneys and their support staff are dedicated professionals.

APPEALS BRANCH

Report of the Chief Crown Attorney (Appeals)

At present the Appeals Branch consists of the Chief Crown Attorney (Appeals), two Senior Crown Attorneys responsible for criminal appeals, and a Senior Crown Attorney responsible for *Young Offenders Act* matters in general and young offenders appeals in particular. One vacancy exists in the complement of the Appeals Branch for which approval to fill has been given. A per diem Crown Attorney is currently attached to the Appeals Branch to assist in criminal appeals. The secretarial staff consists of three. One secretary performs secretarial services for the Chief Crown Attorney (Appeals), and the remaining four Crown Attorneys depend on two secretaries for secretarial services. Overtime work is a common feature of the daily routine of the Appeals Branch, not only for Crown Attorneys, but also for secretaries.

The Appeals Branch is a cohesive unit within the Public Prosecution Service in which decisions and policy are made on a collective rather than an individual basis.

A major initiative in the Appeals Branch during the period of this report was an experimental exchange program between the Appeals Branch and the Dalhousie Law School. For a 12-month period, Dana W. Giovannetti, Senior Crown Attorney (Appeals), joined the faculty of the law school and taught criminal law and evidence courses on a full-time basis. In exchange, Professor Bruce P. Archibald joined the Appeals Branch as a Crown Attorney and argued a number of appeals before the Appeal Division of the Supreme Court. Mr. Giovannetti had a

background in legal teaching on a part-time basis at the law school prior to the exchange, and Professor Archibald's tenure with the Appeals Branch proved to be, in his words, "an interesting, exciting and illuminating experience." Both found the exchange to be a very worthwhile exercise in terms of their respective professional development. Prospects for future exchanges between the Public Prosecution Service and the law school are encouraging. Professor Archibald presented a report of his activities with the Appeals Branch to the Director of Public Prosecutions and the Dean of the Dalhousie Law School, which will hopefully form the basis of future cooperation between the two institutions.

During the period of this report, the Appeals Branch was involved in a number of major appeal cases, before both the Appeal Division and the Supreme Court of Canada. A number of appeal cases are now pending before the Supreme Court.

During the period of this report, the members of the Appeals Branch argued 151 appeal cases before the Appeal Division of the Supreme Court. Of this number, 22 appeals involved young offenders. Fifty-six involved appeals against conviction, 66 concerned sentence cases, and the Crown argued 23 appeals involving verdicts of acquittal at trial. Appeals in non-verdict cases and in special applications to the Court accounted for six of the total number of cases argued before the Court. In addition, 66 cases for appeal were commenced by both the Crown and accused persons but were abandoned prior to hearing. The Chief Crown Attorney (or in his absence another member of the Appeals Branch) participated in 293 applications in Chambers.

The Appeals Branch was involved in nine applications for leave to appeal to the Supreme Court of Canada. During the period of the report, the Crown argued five appeals before the Supreme Court and nine appeal cases remain outstanding and pending in the Supreme Court.

The most visible aspect of the role of a Crown Attorney in the Appeals Branch is the oral argument of appeals before the Appeal Division of the Supreme Court. The Crown Attorney, however, spends much more time in the office and library preparing for appeals than time arguing cases in court.

The work of a Crown Attorney begins with the assignment of an appeal file in which the case has been set for hearing before the Appeal

Division. The Crown Attorney usually receives a particular case file four to eight weeks before the date for hearing, depending upon the nature of the appeal, length of the appeal book (which in turn depends on the length of the trial) and number and complexity of issues raised in the case. Important dates to note are the filing deadlines for the appeal book (if not already prepared and filed) and the facturns of both the appellant and the respondent. Particular attention, of course, is paid to the filing date for the Crown's factum in an appeal. Equally important is the time and date of the appeal.

Once assigned an appeal file, a Crown Attorney reviews it and the trial file forwarded to the Appeals Branch by the Crown Attorneys' office which conducted the trial. The first important step in relation to an appeal file is the careful reading of the entire appeal book. The appeal book includes a copy of the notice of appeal which sets forth the grounds or issues in the appeal. Careful study of the appeal book is an essential responsibility of a Crown Attorney. An appeal book in a sentence appeal often runs 20 to 30 pages, but in some cases may exceed 100 pages, particularly if evidence was called at the sentencing hearing. An appeal book in an appeal from acquittal or conviction in summary conviction proceedings usually runs 30 to 50 pages. However, an appeal book in a case involving a Supreme Court jury verdict may exceed 1,000 pages. Numbers may be deceiving in appeal work. The time required to prepare 10 sentence appeals may not exceed that required to prepare for an appeal in a Supreme Court murder case, for example. Numbers alone are not an accurate measure of a Crown Attorney's caseload.

After the appeal book has been studied and noted, the Crown Attorney conducts research into the issues of the appeal. While a sentence appeal may require a morning in the library, a conviction appeal involving complex points of law may require the Crown Attorney to spend literally days in the library. Research is another important aspect of a Crown Attorney's responsibility in relation to an appeal.

With research completed, the Crown Attorney prepares the written argument or factum for submission to the court and opposing counsel. Arguably, the most important feature of a Crown Attorney's work on an appeal is the writing of the factum. The factum forms the basis of the Crown Attorney's oral argument in court. In terms of length, a factum in a sentence appeal may not exceed 10 pages while a factum in a conviction appeal may run between 30 and 50 pages. In appeals from jury verdicts involving a number of issues, facturns in excess of 50

pages are not uncommon. Depending on the appeal, the Crown Attorney may prepare a book of authorities for the use of the court containing copies of important cases referred to in the Crown Attorney's factum.

The review of the appeal book, the legal research, and the writing of the factum culminate in the oral argument of the appeal before the Appeal Division of the Supreme Court, which sits at the Law Courts building in Halifax, directly across the street from the Bank of Montreal Building in which the offices of the Appeals Branch are located. Close proximity to the Law Courts Building is a convenience which cannot be lightly underscored. To prepare for oral argument, the Crown Attorney usually spends the day before the hearing reviewing the important parts of the appeal book, the appellant's and respondent's factums, and the important cases on the issues before the court. The Crown Attorney prepares a written outline of his oral argument in which the important points he or she wishes to emphasize are highlighted. Last minute research may be required if the Crown Attorney's factum was submitted well in advance of the hearing date.

The Appeal Division hears all conviction and acquittal appeals in Court Room Six on the fifth floor of the Law Courts Building. The court usually sits in either Court Room Five or Seven to hear sentence cases. On average, argument of a sentence appeal takes one-half to one hour of the Court's time. A conviction or acquittal appeal usually takes between one and two hours for argument. A bench of three appeal justices hears each appeal, whether it be from conviction, acquittal or sentence. The court may either render its judgment on the appeal at the conclusion of the oral argument or it may reserve judgment in a case and hand down its decision usually within a month or two. Many more sentence appeals are decided from the bench than conviction or acquittal cases.

Following oral argument and the Court's judgment, the Crown Attorney advises those parties interested in the appeal of its outcome. Copies of the order and reasons for judgment are usually forwarded to the penal institution in which the accused is incarcerated, the clerk of the trial court, the trial judge, the Crown Attorney at trial and his or her Regional Crown Attorney, and the investigating police force. If a sentence is varied or an acquittal set aside and a conviction entered or a conviction set aside and either an acquittal entered or a new trial ordered, the Crown Attorney is responsible for preparing the necessary documents and correspondence to give effect to the Court's judgment,

including any required warrant of committal (the document authorizing a penal institution to incarcerate an offender).

In addition to the duties of a Crown Attorney in relation to appeals, he or she is also available to Crown Attorneys in the Trials Branch for information, opinions and advice. A Crown Attorney is called upon from time to time to evaluate recommendations for appeal received from Regional Crown Attorneys. The Crown Attorney must participate in meetings of the Appeals Branch at which appeals are distributed, opinions canvassed on specific recommendations for appeals, policy issues discussed, and matters in relation to the Supreme Court of Canada considered.

On average, a Crown Attorney argues between 30 and 40 criminal appeals each year. In addition, the Crown Attorney is responsible for the preparation and argument of any applications for leave to appeal and appeals to the Supreme Court of Canada which flow from cases the Crown Attorney argued before the Appeal Division of the Supreme Court.

A Crown Attorney is available to answer questions from members of the public in relation to appeals conducted by the Crown Attorney.

The sittings of the Appeal Division of the Supreme Court are prescribed by rules of court made by Judges of that Court. Five sessions or terms of the Court are held each year. Unless varied by order of the Chief Justice of Nova Scotia, the Court sits from the second week of January to the third week of February, the second week of March to the third week of April, the second week of May to the third week of June, the second week of September to the third week of October, and the second week of November to the second week of December. Although the Court does not sit during the months of July and August, weekly Chambers is conducted 52 weeks of the year. During the summer months, the Crown Attorneys in the Appeals Branch are at work preparing factums for cases to be heard in the autumn terms of the Court.

POLICY DEVELOPMENT AND IMPLEMENTATION

CRIMINAL JUSTICE POLICY FORMULATION

The Attorney General of Nova Scotia has a number of responsibilities with respect to the formulation of criminal justice policy. While the content of Canada's criminal law and procedure is the constitutional obligation of the federal government, provincial and territorial Attorneys General are regularly consulted with respect to amendments to the *Criminal Code* and other federal legislation. The Federal/Provincial/Territorial Committee of Attorneys General and Ministers Responsible for Justice meets annually to discuss issues of concern relating to the criminal justice system. Officials of the Nova Scotia Department of Attorney General also actively participate on intergovernmental committees of deputy ministers responsible for justice, coordinating committees of senior justice officials, and attend the annual Uniform Law Conference.

The formulation of criminal justice policy requires consideration of social and public policy factors. For this reason, the Department of Attorney General has determined that the Attorney General's primary advice in this area should be provided by the Deputy Attorney General and the department's Senior Advisor, Policy and Planning. However, the Public Prosecution Service is uniquely placed to identify deficiencies in the application of existing laws, as well as to provide informed assessments in light of operational experience in relation to proposals for criminal law reform. Accordingly, the Director of Public Prosecutions and other members of the Public Prosecution Service are frequently called upon to provide the Attorney General with advice in this area.

The development of prosecution policy is a direct responsibility of the Public Prosecution Service. In consultation with the Department of Solicitor General and police agencies, the Public Prosecution Service has implemented and will continue to develop directives, protocols and procedures designed to modernize the delivery of prosecution services in Nova Scotia. The restructuring of the Department of Attorney General which resulted from the creation of the Office of Director of Public Prosecutions and the establishment of the positions of General Counsel and Assistant Chief Crown Attorney (Trials) have equipped the Public Prosecution Service to engage in the extensive internal and external consultation required to develop sound policies and procedures. The objective of these efforts is to formulate standards for prosecutorial

decision making that will achieve publicly accepted justice objectives while providing Crown Attorneys with the flexibility required to do justice in individual cases.

Implementation of Marshall Commission Recommendations and Other Initiatives

Even before the *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* was released, many existing prosecution policies were under active consideration. Research was conducted on the policies in force in other provinces and existing Nova Scotian policies were reviewed in light of these policies, the recommendations of the Law Reform Commission of Canada, and the recommendations of the Royal Commission on the Donald Marshall, Jr., Prosecution. The Public Prosecution Service has continued this work. A consultative approach has been taken to policy development. Efforts are made to solicit the views of members of the Public Prosecution Service on proposed policies and, in some cases, the views of outside agencies or groups have been sought.

In February of 1990, the Attorney General of Nova Scotia issued a policy directive on disclosure to Crown Attorneys, The implementation of this policy directive pre-dated the proclamation of the *Public Prosecutions Act*. This policy directive was developed by a committee of senior staff of the Department of Attorney General. In developing the policy, the committee reviewed policies in place in other provinces, the existing Nova Scotian policy, the recommendations of the Marshall Commission and the recommendations of the Law Reform Commission of Canada. Subsequent to the adoption of the policy the Public Prosecution Service has sought the views of defence counsel and members of the bar on the new policy.

On April 12, 1991, the Protocol for Investigation and Prosecution of Cases Involving Persons With Special Communication Needs was issued by the Attorney General of Nova Scotia (Appendix C). The initial draft of the protocol was developed by a committee with representatives from the Department of Attorney General, Solicitor General and Community Services as well as the Canadian Association for Community Living. This policy is designed to guide criminal justice officials in the full and comprehensive investigation and prosecution of cases involving persons with special communication needs. Persons with special communication needs are those individuals who, because of age, level of literacy, on mental or physical disability are unable,

without assistance, to fully assess the criminal justice system or understand or to be understood by officials thereof. The Nova Scotia Special Needs Protocol is the first such document in Canada.

On June 17, 1991, in conjunction with a pilot project on post-charge screening, the Director of Public Prosecutions issued general guidelines to Crown Attorneys on the public interest factors which should be considered when deciding whether to exercise prosecutorial discretion to stop a prosecution. (See Appendix C). Prior to the issuance of these guidelines, the input of Crown Attorneys was sought. The list of factors proposed in the Marshall Commission report was used as a basis for discussion. Following the review, the list of factors proposed by the Marshall Commission was adopted without substantial change.

In March 1991, a common assault policy draft was prepared and presented to the Public Prosecution Service Management Council for consideration. Concerns were expressed that practical difficulties would result from the implementation of the proposed new policy. For this reason, the new policy is being pilot tested in two regions of the province from June 1, 1991, through December 1, 1991. Results of the pilot test will be analysed by the Prosecution Service and a determination made whether any recommendations should be made to the Attorney General.

In July 1991, the Appeals Branch presented Management Council of the Public Prosecution Service with a draft policy directive on appeals in indictable matters. The draft was subsequently adopted and issued pursuant to s.4(c) of the *Public Prosecutions Act*.

During 1991 the Department of Attorney General Family Violence Committee developed draft policy statements on spousal assault and child abuse prosecutions. These draft policy statements are also in the process of being reviewed by the Management Council of the Public Prosecution Service.

In 1991, in an effort to enhance the process of policy development and to develop a policy handbook for Crown Attorneys, regional policy development committees were established in the province. Policy manuals from other provinces have been obtained and are being used by the regional policy development committees to assist in developing draft policies on various topics. Once draft policy statements have been prepared by the regional committees, the consultative phase of the

process will begin. It is hoped that the Public Prosecution Service will be in a position to introduce a new policy manual for Crown Attorneys in 1992.

Post-Charge Screening Pilot Project

Recommendation 37 of the *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* proposed that the Attorney General of Nova Scotia institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward. The Attorney General accepted this recommendation on February 7, 1990. Following the appointment of Regional Crown Attorneys, the Public Prosecution Service Management Council commenced work on the development of procedure and standards to be used in the pilot project.

The pilot project commenced on June 1, 1991. The objectives of the pilot project are to gather useful information concerning the following:

1) the frequency with which it is necessary to exercise prosecutorial discretion to terminate prosecutions;
2) the benefits to be derived from the early detection of deficiencies in Crown files;
3) the benefits to be derived from an early determination of the Crown's position on sentence;
4) the quality of crown sheets; and
5) the efficiency of our present common assault policy.

The policy of the Public Prosecution Service is not to prosecute cases of simple assault save in certain exceptional circumstances where it is appropriate for the Crown to become involved in such prosecutions. During the term of the pilot project the current policy on common assaults will be suspended in the project areas in relation to R.C.M.P. common assault charges. The policy will remain in effect outside the pilot project areas and with respect to non-R.C.M.P. charges within the project area.

Following the pilot project, the Public Prosecution Service Management Council will assess the results and determine whether any recommendations should be made to the Attorney General.

Equal Justice Issues

The *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* recommended that the Department of Attorney General adopt and publicize a policy on race relations. In 1990, the Department of Attorney General established a Marshall Implementation, Minority Rights Committee with representation from the Public Prosecution Service. This committee developed a draft affirmative action hiring policy for casual employees of the department. This draft policy was accepted by the Attorney General and implemented. The Casual Employee Affirmative Action Hiring Policy sets forth the intention of the Department of Attorney General as follows:

> "to promote the hiring of affirmative action candidates in casual positions to permit them to gain experience which will enhance their opportunities for permanent employment."

The Marshall Commission recommended the establishment of continuing professional education programs for Crown Attorneys which would include an exposure to materials explaining the nature of systemic discrimination and an exploration of means by which Crown Attorneys can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system. In September 1990, the Department of Attorney General held a workshop on systemic discrimination sensitization for Crown Attorneys and Department Solicitors. The facilitator for this session was Ms Brenda Taylor, Commissioner of the Nova Scotia Human Rights Commission. At the 1991 fall education conference a session on native rights was conducted. Details with respect to this session will be provided in the next annual report.

During the summer of 1990, the Department of Attorney General hired a summer employee from the Dalhousie Law School indigenous black and Micmac program (IBM). It would appear from the comments of those who dealt with the IBM student and from his report that his period of employment was of mutual benefit. As a result of this positive experience, another IBM student was employed by the Department of Attorney General during the summer of 1991.

HUMAN RESOURCE MANAGEMENT

PROFILE OF CURRENT PERSONNEL

As of August 31, 1991, the Public Prosecution Service was composed of the following positions:

Director of Public Prosecutions
Chief Crown Attorney (Trials)
Assistant Chief Crown Attorney (Trials)
Chief Crown Attorney (Appeals)
Four Regional Crown Attorneys
An Associate Regional Crown Attorney (Halifax)
25 Senior Crown Attorneys
23 Crown Attorneys
37 Per Diem Crown Attorneys

The lawyers of the Public Prosecution Service were assisted in their duties by 33 secretarial or clerical support staff.

Upon appointment to the Public Prosecution Service, a barrister becomes a Crown Attorney and, by operation of the *Public Prosecutions Act*, has all the powers, authorities and duties provided by the criminal law of Canada for prosecutors or for counsel acting on behalf of the Attorney General. Crown Attorneys who have six or more years of employment with the Public Prosecution Service, or equivalent prosecuting experience elsewhere, are entitled to employ the designation Senior Crown Attorney.

To fulfill its mandate of conducting all prosecutions within the jurisdiction of the Attorney General, the Public Prosecution Service, sometimes requires the services of lawyers in addition to its full-time staff to represent the Crown on a part-time basis in the conduct of criminal and other proceedings in court. These occasions arise due to additional court sittings being scheduled, conflicts in the schedules of full-time Crown Attorneys, or the need for vacation coverage.

During the period of this report, the Public Prosecution Service restructured the way in which lawyers who conduct prosecutions on a part-time basis are appointed. The Service advertised and invited

applications from lawyers with experience in criminal law. The applications were assessed by the Regional Crown Attorneys, who submitted recommendations to the Director of Public Prosecutions. From these recommendations, appointments were made by the Director of Public Prosecutions pursuant to Section 14(1) of the *Public Prosecutions Act*. The names of those appointed appear on a roster of part-time Crown Attorneys and these part-time Crown Attorneys are utilized when required by the Regional Crown Attorneys.

APPOINTMENT PROCESS

Crown Attorneys in Nova Scotia are appointed on the basis of merit. Section 12 of the *Public Prosecutions Act* requires that all full-time Crown Attorneys be barristers appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions following a competition. Vacancies within the Public Prosecution Service are publicly advertised. Any member of the Nova Scotia Barristers' Society is qualified to make application for an advertised vacancy. The competition process ensures that the best qualified candidates are appointed as Crown Attorneys.

It is the desire of the Public Prosecution Service to increase the representation of visible minorities and women within the complement of Crown Attorneys. The process of publicly advertising all Crown Attorney vacancies within the Public Prosecution Service facilitates information concerning available vacancies being made available to qualified candidates. Increased representation of women and visible minorities in the Public Prosecution Service will assist in making the justice system more responsive to all segments of Nova Scotian society.

PERFORMANCE EVALUATION

Crown Attorneys have been remunerated on the basis of the Hay System Management Compensation Pay Plan since 1981. An element of the Hay Pay Plan is the awarding of additional compensation by way of merit pay which is tied to an annual performance evaluation. The Crown Attorneys of the Public Prosecution Service have participated in annual performance reviews for the last three years utilizing an evaluation form developed by the Personnel Services Division of the Department of Attorney General in consultation with the Public Prosecution Service.

The Public Prosecution Service recognizes the value of annual performance assessments during which Crown Attorneys meet with their supervisors and performance during the preceding appraisal period is evaluated. This provides an opportunity for ongoing dialogue between an employee and his or her supervisor and permits the supervisor to identify any problem areas which can be addressed through counselling or participation by the employee in an upgrading or training program.

While the Public Prosecution Service is committed to the concept of performance evaluation for its staff, it is felt that the current performance appraisal form and system require further refinement in order to adequately measure the performance of lawyers functioning as Crown Attorneys. To this end, other systems of performance appraisal will be evaluated in order that an appraisal system can be put in place which will be viewed as more meaningful by those employees who are the subject of annual appraisals.

COMPLAINTS PROCEDURE

The mandate of the Regional Crown Attorneys, the Chief Crown Attorney (Trials) and the Chief Crown Attorney (Appeals) includes responsibility for complaint resolution. Members of the public or peace officers may make a complaint concerning the actions of a Crown Attorney to the Public Prosecution Service. The complainants are encouraged to provide their concerns in writing to the appropriate Regional or Chief Crown Attorney. A copy of the letter of complaint is then forwarded to the Crown Attorney concerned, for his or her response to the complaint. Following receipt of the comments of the Crown Attorney concerned, the complainant's views and those of the Crown Attorney complained of are assessed and a determination is reached as to the appropriate response to the complaint. As part of the review process, the supervising Crown Attorney may examine a transcript of any court proceedings which are relevant to the complaint. Upon completion of this review, both the complainant and the Crown Attorney concerned are advised of the response of the Public Prosecution Service to the complaint.

PROFESSIONAL DEVELOPMENT

The Management Council of the Public Prosecution Service of Nova Scotia recognizes that ongoing professional development of Crown Attorneys is the key to ensuring a high standard of performance by Crown Attorneys. Between April 1, 1990, and August 31, 1991, Crown Attorneys have benefitted from workshops and conferences presented by the Department and by outside organizations.

The Federation of Law Societies of Canada, National Criminal Law Program, has been identified by the Management Council of the Prosecution Service as the single most beneficial program presented annually for Crown Attorneys. For this reason, a number of Crown Attorneys were sponsored to attend the 1990 program in Edmonton, Alberta, on Substantive Criminal Law Issues. In 1991 the program was held in Fredericton, New Brunswick. This program, which concentrated on Evidence and Charter Law, was attended by at least one Crown Attorney from each region of the province and the head office and Appeals Branch.

In October 1990, a Crown Attorney from the Public Prosecution Service was sponsored to attend the National Conference on Child Abuse in Toronto, Ontario.

The Continuing Legal Education Society of Nova Scotia has presented a series of workshops on basic trial advocacy. Crown Attorneys have attended workshops on "Direct Examination," "Cross-Examination," and "Trial Strategy." Crown Attorneys have also attended workshops sponsored by other organizations within the province on such topics as family violence and arson.

From April 1 to 4, 1990, the Public Prosecution Service conducted a conference for Crown Attorneys on the prosecution of child abuse cases. Experts from New Brunswick, Ontario, British Columbia, and Nova Scotia shared the benefits of their experience in relation to child abuse prosecutions.

In September 1990, at the Department of the Attorney General Fall Education Conference, the Public Prosecution Service held a workshop on systemic discrimination sensitization. At the 1991 Fall Education Conference a session on aboriginal rights was presented to the Public Prosecution Service and other professional staff of the Department of Attorney General.

In May of 1991, Marie DeYoung, law librarian for the Department of Attorney General, agreed to coordinate an opinion referral service for Crown Attorneys. All Crown Attorneys have been encouraged to submit to the opinion referral service legal research they have conducted on any criminal law issue so that other Crown Attorneys may benefit from their efforts.

IMPROVING THE DELIVERY OF PROSECUTION SERVICES

The Public Prosecution Service provides service to a broad range of people. Everyone who works or appears in the courts, in whatever capacity, is our customer. The judiciary, police, victims, witnesses, accused, court staff, defence counsel, and the general public all deserve the best service we can provide. The purpose of this section of the report is to make recommendations to improve the quality and effectiveness of the work we perform and to increase our efficiency in doing it.

The Impact of Legal Specialization

Crown Attorneys have traditionally been required to undertake the prosecution of a wide variety of criminal and provincial offences. As a result, Crown Attorneys develop expertise in criminal law, criminal procedure, evidence law and trial or appellate advocacy. These skills stand them in good stead in conducting the great majority of prosecutions which come before the courts. The last decade has seen increased specialization in the legal profession. To competently prosecute the criminal law, it is now necessary for Crown Attorneys to have a solid understanding of the practical application of the *Charter of Rights and Freedoms*, the provisions of detailed federal legislation such as the *Young Offenders Act*, and the regular changes made to the *Criminal Code*. In addition to this increase in the complexity of the legal skills required of all Crown Attorneys, a need has emerged for Crown Attorneys with even more specialized skills. In 1989 a Special Prosecutions Unit was established to respond to the particular demands posed by complex commercial crime prosecutions.

Sexual Assault and Domestic Violence Prosecutions

Since 1989 the Department of Attorney General has identified a requirement in its strategic plan for Crown Attorneys who are specialized in the prosecution of sexual abuse cases involving children and cases of domestic violence. Specialized Crown Attorneys would enhance the ability of the Public Prosecution Service to respond to these cases in a compassionate and coordinated manner. In July of 1991, in response to a report released by the Advisory Council on the Status of Women, the Attorney General announced that an additional Crown Attorney position dedicated to the prosecution of cases of sexual assault involving children and females would be established within the Public Prosecution

Service. Creation of this position represents an important step in responding to the concerns identified by the Advisory Council and other informed observers.

Provincial Offence Prosecutions

The prosecution of violations of provincial statutes is a regular part of the responsibilities of Crown Attorneys. Most of these prosecutions can be accommodated within the normal operations of the Public Prosecution Service. However, some of them require a significant resource commitment. Cases involving aboriginal treaty and inherent rights call for extensive legal research and pre-trial preparation. The Department of Environment has identified the need for specialized investigative capability; the prosecution of environmental offences also demands specialized technical and legal expertise.

The Public Prosecution Service would be able to more effectively prosecute complex provincial offences if a provincial offence prosecutions unit existed within the Service. Such a unit would be able to:

1) develop expertise in the prosecution of strict liability provincial offences;
2) provide pre-charge advice to departmental investigators in complex cases; and
3) provide prosecutorial services with respect to complex provincial offence prosecutions.

A specialized unit could provide prosecutorial services to all government departments upon request. Since it would operate within the framework of the Public Prosecution Service, any disagreement between a Crown Attorney in the unit and the government department in question could be pursued with the Chief Crown Attorney (Trials) and, if the disagreement cannot be otherwise resolved, with the Director of Public Prosecutions. If the disagreement remains unresolved, the ultimate charging decision should rest with the investigating department, subject to the Crown's discretion not to proceed with the prosecution.

Per Diem (Part-Time) Crown Attorneys

The Public Prosecution Service has been unable to enhance the remuneration offered to those interested in prosecuting on a part-time basis. The tariff currently employed has not changed since 1983. This has severely restricted the ability to retain the services of lawyers

experienced in the practice of criminal law to serve as part-time Crown Attorneys.

Part-time Crown Attorneys receive $150 for a half-day court appearance, and $300 for a full day. These rates are inclusive of preparation time spent out of court. The only exception is when a part-time Crown Attorney represents the Crown on an appeal to the County Court. Part-time Crown Attorneys receive $50 per hour, to a maximum of six hours, for time spent in legal research and in the preparation of a court brief for County Court appeals. In contrast, the Department of Justice remunerates federal Standing Agents on the following basis:

Years at the Bar	Hourly Rate	Daily Maximum (not to exceed 10 hours)
5 years and under	$60	$600
Over 5 years but less than 10 years	$71	$710
10 years and over	$82	$820

In addition to the foregoing, there is a fee rate for law students and para-legal assistants which is $30 per hour up to a maximum of $300 per day.

From time to time, the court commitments of full-time Crown Attorneys require that part-time Crown Attorneys be requested to undertake prosecutions which require out of court preparation. Without the ability to compensate lawyers for the time spent preparing for court, the Public Prosecution Service will be unable to continue to retain the services of experienced lawyers to act on a part-time basis for the Crown. The Public Prosecution Service views the current level of remuneration for part-time Crown Attorneys as inadequate and an area which requires attention.

Additional Resource Requirements

The Department of Attorney General has made significant efforts to correct historical deficiencies in the resources available to conduct prosecutions in Nova Scotia. During the past five years, in response to judicial appointments, increased workloads and growth in the complexity of the criminal law, the professional and support staff devoted to prosecutorial activities has increased by 37 per cent. The

Public Prosecution Service Management Council has identified a number of areas where additional resources are required.

Regional Crown Attorneys

While the Public Prosecution Service has significantly benefited from the establishment of Regional Crown Attorney positions, it should be noted that these positions did not represent any expansion of the Public Prosecution Service. The positions were created through reclassifications. This has limited the ability of the Regional Crown Attorneys to fully discharge their administrative and management functions because they have had to maintain a caseload. In order for Regional Crown Attorneys to more effectively discharge their new responsibilities, it is desirable that additional positions be created within the Public Prosecution Service. The present staffing level does not allow, for example, sufficient time to be devoted to the evaluation of the individual performances of Crown Attorneys. The evaluation of professionals is a difficult but critical supervisory task. As the *Royal Commission on the Donald Marshall, Jr., Prosecution* recognized, evaluation affects job satisfaction, morale, and, ultimately, the quality of the performance of the Public Prosecution Service.

Special Prosecutions Unit

The Special Prosecutions Unit, located in the Head Office of the Public Prosecution Service in Halifax, is currently staffed by two Senior Crown Attorneys. This Unit was created to respond to complex commercial crime cases which involve extensive pre-charge consultation with the police, require a great deal of out-of-court preparation, and result in lengthy preliminary inquiries and trials. With a staff of two, the Special Prosecutions Unit routinely encounters problems in fulfilling its mandate.

By way of example, complex commercial crime cases require the attention of two Crown Attorneys, both at the preparation stage and in the presentation of the Crown's case in court. Since its inception in 1989, the unit has had to function either without a second lawyer's assistance, or by attempting to borrow the services of a Crown Attorney from another section of the Public Prosecution Service. In the Province of New Brunswick, the Special Prosecutions Unit is staffed by three Crown Attorneys. Similarly, in the Province of Newfoundland, the Department of Justice has a Special Prosecutions Unit staffed by three full-time lawyers. These jurisdictions have recognized that this type of Unit can only function in a fully effective manner with a minimum of three full-time Crown Attorneys.

Responding to Vacancies and Increased Demands for Service

During the period covered by this report the Public Prosecution Service has encountered difficulties in responding to staffing vacancies created by internal transfers, retirements and judicial appointments. In some cases these vacancies were anticipated but replacements were not provided in a timely fashion. A more expeditious procedure for obtaining approval to fill vacancies would avoid situations where existing human resources have to be dangerously stretched to maintain appropriate levels of service.

The lack of a comprehensive approach to the appointment of judges, particularly Provincial Court Judges, posed significant problems for the Public Prosecution Service during the reporting period. Judges were appointed without consideration being given to the need for a Crown Attorney and other Court staff to service the newly created Court. It is essential that additional judicial appointments be coupled with the appointment of additional Crown Attorneys and Court administrative staff.

Secretarial and Support Staff

One of the most pressing concerns of the Public Prosecution Service relates to secretarial and support staff. With the advent of Regional Crown Attorneys, the administrative workload of the secretaries in the four Regional Crown Attorneys' offices has increased dramatically. Just as additional Crown Attorney positions have not been created to permit Regional Crown Attorneys to devote increased time to their management duties, there has also been no recognition of the need for additional secretarial resources in these offices.

Several office locations do not have sufficient secretarial and support staff. In Dartmouth, for example, seven Crown Attorneys are supported by two full-time secretaries and one casual clerk, who respond to all clerical, filing and receptionist duties in addition to assuming regular secretarial responsibilities. The level of support service being provided in a number of offices has not kept pace with the growth in personnel and workload experienced by these offices.

Response to Established Protocols

The various components of the criminal justice system are increasingly working in a more cooperative manner to meet the needs of victims of

crime. This trend has resulted in the development of protocols which guide the actions of Crown Attorneys in concert with the police and community service workers. These protocols are a welcome improvement in the manner in which important societal problems are being addressed. However, in order to provide the heightened level of response required by the protocols, and expected by the public, additional demands are placed on the out-of-court time of Crown Attorneys.

In the spring of 1991, the Attorney General signed a protocol dealing with the response of Crown Attorneys to cases involving persons with special communication needs. One aspect of this protocol requires Crown Attorneys to meet with victims or witnesses with special communication needs on several occasions prior to trial in order to aid the victim's or witnesses' understanding of the court process. This heightened level of service consumes additional out of court preparation time.

Premises

The office locations of the Public Prosecution Service are referred to in Regional Crown Attorneys' reports and are depicted on the map attached as Appendix E. For the most part, Crown Attorneys are housed in satisfactory premises. One aspect that does require attention is the need for improved facilities in which Crown Attorneys can meet with witnesses. Crown Attorneys routinely meet with police or civilian witnesses prior to the commencement of preliminary inquiries or trials and often deal with five or six people at one time. The maximum allowable space for a Crown Attorneys' office is 150 sq. ft. This is not conducive to a meeting involving five or six people.

While the majority of the offices are housed in suitable premises, the premises occupied by Crown Attorneys at the Provincial Court House, Spring Garden Road, in Halifax are not satisfactory. This is one of the busiest court facilities in the province. The individual Crown Attorney's offices are cramped and suffer from inadequate heating and ventilation. Immediate attention to these premises is warranted.

In an ideal world, Crown Attorneys would have one day of preparation time for every day spent presenting a case in court. In the real world, preparation time has to be accommodated around daily court appearances. Victim and witness interviews are conducted in the morning before court starts, during the lunch break and after the close of the court day. It is the nature of court work that legal and factual issues emerge unexpectedly, requiring last minute research. This reality

requires that Crown Attorney offices be located as close as possible to the courthouse. The location of Crown Attorney offices across the country reflects this reality.

The public should not be required to go to a number of different locations to avail itself of public legal services. The *Report of the Nova Scotia Court Structure Task Force* recently recognized the need for victim support services to be located in or near the courthouse and the need for private discussion areas for lawyers and victims. Locating Crown Attorney offices a significant distance from the courthouse ignores the important principle that the criminal justice system exists for the benefit of the public and should be operated in ways that accommodate the convenience of the public to the fullest extent possible.

Office Equipment

Crown Attorney offices throughout the province continue to experience difficulties with inadequate office equipment. To date, the Public Prosecution Service has been unable to obtain a sufficient quantity of modern computerized word processing equipment. For example, Crown Attorneys prepare briefs for submission either to County Court on appeal or to the Supreme Court. In addition, the Appeals Branch of the Public Prosecution Service is routinely involved in the preparation of lengthy factums detailing the Crown's arguments for or against an appeal. The efficiency of Crown Attorneys and support staff would be greatly improved by the provision of enhanced word processing equipment, initially in the Regional Crown Attorneys' offices and subsequently throughout the Public Prosecution Service.

This technology would also permit Crown Attorneys to have more up to date criminal history information at their disposal when addressing questions of sentencing or the release of an accused person on bail. At present, Crown Attorneys rely on criminal record information supplied by the police, supplemented by their own manually maintained office criminal history records. Computerized record keeping would enable Crown Attorneys in one part of the province to be better informed should an accused person be criminally active in other parts of the province.

Crown Attorney offices throughout the province routinely encounter problems in responding to the requirement to make full and timely disclosure to the defence because of inadequacies in the available photocopying equipment. A review of existing equipment, and

upgrading where necessary, should be initiated. With the increasing reliance on videotaped evidence, particularly in relation to child victims of sexual assault, all Crown Attorney offices need to have video playback and monitoring equipment available. At present, only a few offices are so equipped. Additional video monitoring equipment should be placed at the disposal of these offices.

Finally, the Special Prosecutions Unit often deals with cases involving extensive documentation. The operations of the Special Prosecutions Unit would benefit from a study of how technology might assist the work of this Unit with the organization and more effective presentation of complex cases.

Research Facilities

The Public Prosecution Service is very fortunate to have access to the Attorney General's library. The law librarian and her assistant respond very effectively to requests for research assistance. However, a law librarian in Halifax, no matter how competent, cannot meet the needs of Crown Attorneys located throughout the province. For this reason, the Royal Commission on the Donald Marshall, Jr., Prosecution recommended improvements in the research facilities available to Crown Attorneys. Unfortunately, the Public Prosecution Service has seen a significant reduction in the quality and accessibility of its research facilities. In the 1991–92 fiscal year, local Crown Attorney offices experienced a 30 to 50 per cent reduction in the funds available for library materials. Both Professor Bruce Archibald, in his research study for the Royal Commission, and the Royal Commission itself suggested dramatic action be taken in this area, including the possible establishment of a central, computerized legal research facility, perhaps in conjunction with the Nova Scotia Legal Aid Commission.

CONCLUSION

The Public Prosecution Service Management Council realizes the economic realities facing Nova Scotia. All expenditures of public funds must be carefully scrutinized. We have a responsibility to ensure that the public receives full value for its money. The recommendations contained in this section are made in the firm belief that the Public Prosecution Service can only effectively discharge its public responsibilities if it has the resources required to do the job properly.

APPENDIX A

BILL NO. 72
Government Bill

2nd Session, 55th General Assembly
Nova Scotia
39 Elizabeth II, 1990

An Act to Provide for an Independent Director of Public Prosecutions

Chapter 21
Acts of 1990

The Honourable Thomas J. McInnis
Attorney General

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
19TH JUNE, 1990

Halifax
Printed by Queen's Printer for Nova Scotia

AN ACT TO PROVIDE FOR AN INDEPENDENT DIRECTOR OF PUBLIC PROSECUTIONS

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Public Prosecutions Act.*

2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by

(a) is the head of the public prosecution service and establishing the position of Director of Public Prosecutions;

(b) providing for a public prosecution service; and

(c) providing for the independence of the Director of Public Prosecutions and the public prosecution service.

3 In this Act, "prosecution" includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals.

4 There shall be a Director of Public Prosecutions who

(a) is the head of the public prosecution service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;

(b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;

(c) is, for the purpose of the *Criminal Code* (Canada) and the *Summary Proceedings Act,* the Attorney General's lawful deputy in respect of prosecutions;

(d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;

(e) may issue general instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published.

(f) may issue instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in a particular prosecution.

5 (1) The Director of Public Prosecutions

(a) shall be a barrister of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;

(b) shall be appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers' Society;

(c) holds office during good behaviour;

(d) has the status of deputy head and the provisions of the *Civil Service Act* and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and

(e) shall be paid the same salary as the Chief Judge of the provincial court.

(2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.

(3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions who shall take over the duties of the Director of Public Prosecutions until fifteen sitting days after the Assembly is next sitting or until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions.

6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and

(a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;

(b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Posecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;

(c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;

(d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;

(e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions.

7 The Director of Public Prosecutions may, from time to time, designate a barrister in the public service to be Deputy Director of Public Prosecutions who is responsible to the Director of Public Prosecutions and who may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the Attorney General.

8 There shall be crown attorneys to conduct prosecutions and the crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief crown attorney or a regional crown attorney.

9 There may be a regional crown attorney to supervise crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional crown attorney is responsible to the Director of Public Prosecutions.

10 There may be a chief crown attorney to supervise crown attorneys and, where applicable, regional crown attorneys, and a chief crown attorney is responsible to the Director of Public Prosecutions.

11 A chief crown attorney, a regional crown attorney and a crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General.

12 All chief crown attorneys, all regional crown attorneys and all full-time crown attorneys shall be barristers appointed pursuant to the Civil Service Act upon the recommendation of the Director of Public Prosecutions after a competition.

13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions.

14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.

(2) A barrister appointed pursuant to this Section shall be known and designated as a crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a crown attorney.

(3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a crown attorney pursuant to this Section or may, at any time, revoke the appointment.

15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are crown attorneys for the purpose of this Act.

16 Clause (c) of subsection (1) of Section 30 of Chapter 210 of the Revised Statutues, 1989, the *House of Assembly Act,* is amended by striking out the punctuation and words "prosecuting officer" in the second and third lines thereof.

17 Chapter 362 of the Revised Statutues, 1989, the *Prosecuting Officers Act,* is repealed.

18 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation.

APPENDIX B

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(Trials)
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Assistant Chief Crown Attorney
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Special Prosecutions Unit
2 Crown Attorneys
Gary Holt, Q.C.
Bernadette Macdonald
Chief Crown Attorney
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Darrell I. Carmichael
William N. Ferguson, Q.C.
Craig M. Harding
Robert N. Prince
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James A. Barrett
Bruce Baxter
Craig R. Bottrell
Paul Bychok
Stephanie Cleary
William Delaney
John A. Feehan
Robert Fatterly
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Darrell N. Martin
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Alanna Murphy
J. Christopher Nicholson
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William F. Kaulback, Q.C.
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William F. Murphy, Q.C.
Pr[illegible] Roalnkl
G. Arthur Thauerkauf

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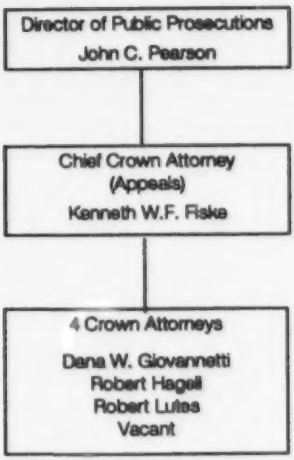
Claudine MacDonald
Richard J. MacKinnon
William F. Murphy, Q.C.
A. Keith Sheers
Paul N. Walker
Brian D. Williston

Public Prosecution Service
Appeals Branch
Professional Staff



APPENDIX C I

PROTOCOL FOR INVESTIGATION AND PROSECUTION OF CASES INVOLVING PERSONS WITH SPECIAL COMMUNICATION NEEDS

STATEMENT OF PURPOSE

This protocol is designed to guide criminal justice officials in the full and comprehensive investigation and prosecution of cases involving persons with special communication needs. Persons with special communication needs are those individuals who, because of age, level of literacy, mental or physical disability are unable, without assistance, to fully access the criminal justice system or understand or be understood by officials thereof.

ABBREVIATIONS AND DEFINITIONS

- "v/w" means victim or witness with special communication needs.
- "support person" means a person who is well-known and trusted by the v/w and may include family, friend or service provider employed by the v/w, group home, institution or government. This person may assist by providing personal and emotional support and in many cases by providing assistance in communicating.

STATEMENT OF PRINCIPLES

1. All v/w are entitled to full, fair and equal access and participation in the criminal justice system.
2. The effort of criminal justice officials to compensate for the needs of the v/w must be directly proportionate to the needs of the v/w; i.e., the greater the needs, the greater the effort to assist.
3. Every reasonable effort is to be made by criminal justice officials to provide the v/w with an interpreter or special equipment or other assistance as required. (see Appendix A)

POLICE

1. Upon receipt of a complaint where either the victim or a witness has special communication needs, the police are to conduct a prompt, detailed and thorough investigation.

2. When, in dealing with a v/w, the police are unable to obtain a statement due to the special communication needs of the v/w, the police are to:
   (a) arrange a time and place to conduct an interview;
   (b) arrange for a support person to be present:
   (c) if the support person cannot assist with communication, arrange for an interpreter to be present;
   (d) if necessary, arrange for the use of special equipment or other assistance as required.

3. If appropriate, the support person for a v/w should be permitted to be present during the interview regardless of whether an interpreter is also present.

4. Regardless of the age of the v/w whenever possible, the interview with the v/w is to be audio-taped and/or video-taped.

5. The police investigator is to maintain possession of any video-tape or audio-tape of the interview of the v/w.

6. Any request of the Police by the accused or defence counsel to view the tape is to be referred to the Crown. When authorized by the Crown, the police are to arrange a time and place for the defence counsel and the accused to view the tape.

7. The police are to keep the v/w and where appropriate, the support person, informed about the progress of the case.

8. If, at any stage, the investigation is discontinued, the v/w or, where appropriate, the support person, is to be promptly informed of that fact and the reasons therefor. In addition, the police are to specify, in the police file, the reason(s) for discontinuing the investigation.

9. The police officer who commences the investigation involving a v/w is to remain on the case through to its conclusion unless circumstances make it impossible.

10. Where a person suspected of committing an offence has special communication needs, the police, before conducting an interview with the suspect, are to:

    (a) if appropriate, allow a support person to be present during the interview;

    (b) take all reasonable steps to ensure that the suspect understands his/her rights and has full opportunity to exercise those rights; and

    (c) take all reasonable steps to ensure that the suspect and the investigator are able to communicate and understand each other and if they do not, arrange for an interpreter to be present;

    (d) where a support person or interpreter is present for the interview, the investigator should ask him/her to sign a statement indicating that it appeared to them that the accused understood his/her rights and the questions posed by the investigator.

CROWN

1. When asked by the police for advice as to whether the evidence collected is capable of constituting reasonable and probable grounds for a charge, or, where a charge has been laid, when deciding whether to continue the prosecution, the Crown is to:

    (a) assess the v/w's ability to communicate their evidence;

    (b) assess the v/w's understanding of the nature of an oath or solemn affirmation;

    (c) assess the v/w's understanding of what it means to promise to tell the truth;

    (d) assess the v/w's statement (which may be written, audio-taped or video-taped) and if the statement is inadequate, request the police re-interview him/her or personally interview the v/w;

    (e) consider the potential evidence of the v/w in combination with all of the other evidence. (It may not be necessary for the evidence of the v/w to be strong if the other Crown evidence is sufficient); and

    (f) consider the views of the v/w, and where appropriate, the views of the support person, the police investigator, the social workers or other persons involved with the v/w.

2. Prosecution of cases involving a v/w should be pursued wherever sufficient evidence exists unless public interest considerations dictate otherwise. Where a decision is made not to prosecute, the reasons therefor are to be discussed with the v/w and, where appropriate, the support person. Such discussion should be held before the prosecution is stopped. In addition, the reasons for stopping the prosecution are to be stated in the Crown file.

3. Whenever a charge is laid which involves a v/w, the Crown, as soon as practicable, is to meet with the v/w for the purpose of:

   (a) getting acquainted;

   (b) discussing the Court process in a manner appropriate to the abilities of the v/w; and

   (c) making a preliminary assessment of the v/w's communication abilities and needs.

4. At any meetings between the Crown and the v/w, a support person is to be permitted to attend if so desired by the v/w unless this interferes with the Crown Attorney's preparation of the case. Also, at such meetings, all interpreters or special equipment necessary or other assistance as required to enable the Crown to understand the v/w is to be used.

5. The Public Prosecution Service will place a high priority on ensuring that a Crown Attorney is assigned to a case involving a v/w at the earliest opportunity and remains with the case until it is concluded.

6. In all cases involving a v/w, the Crown will ensure that the v/w and, where appropriate, his or her support person, is kept informed of the status of the case.

7. In preparing for a Court hearing wherein a v/w is going to testify, the Crown, unless it is inappropriate, will meet with the v/w within a week of the hearing to:

   (a) get re-acquainted with the v/w;

   (b) re-discuss the Court process;

   (c) if possible and appropriate, show the v/w the Courtroom;

   (d) re-assess the v/w's ability to communicate their evidence;

   (e) re-assess the v/w's understanding of the nature of an oath or solemn affirmation;

(f) re-assess the v/w's understanding of what it means to promise to tell the truth;

(g) review the v/w's anticipated evidence;

(h) prepare the v/w for cross-examination. It is important for v/w's to know the truthful answer is always the right answer.

(i) prepare the v/w for possible not guilty verdict.

8. On the day of the Court hearing, the Crown is to make reasonable efforts to ensure that the v/w has a private and comfortable place to wait before going into the Courtroom to testify.

9. When a v/w is testifying, the Crown will take every reasonable step to attempt to ensure that the v/w is able to be understood by the presiding judge (jury). Without intending to restrict the intent of the foregoing statement, the Crown is to, where appropriate:

(a) make a request for the exclusion of the public (s.486(1)C.C.C.);

(b) make a request for non-publication of information which may tend to disclose the identity of the v/w (s.486(3) C.C.C.);

(c) make use of interpreters or special equipment or other assistance as required to aid in enabling the v/w to be understood;

(d) call an expert witness to explain the special communication needs of the v/w. If the ability of the v/w to testify is challenged, the Crown is to consider calling an expert on the voir dire relating to this issue.

10. The Crown, in cases involving a v/w is to make every reasonable effort to obtain an early Court date.

11. The Crown will ensure that wherever reasonable and appropriate, the concerns of a v/w or his/her support person regarding the accused's release pending trial or views regarding sentencing are communicated to the Court.

12. The Crown will advise victims with special communication needs, in appropriate cases, of the provisions of the Compensation for Victims of Crime Act. The Nova Scotia Criminal Injuries Compensation Board telephone number is 424-4651.

13. Where a sentence has been imposed, the Crown Attorney is to explain the sentence imposed by the judge to both the victim with special communication needs and the support person.

14. In the event of an appeal, the Crown Attorney conducting the appeal is to advise the victim with special communication needs and the support person of the fact an appeal has been commenced and advise of the outcome once the appeal has been heard.

The following organizations are capable of providing communication assistance or directing criminal justice officials to the communication resource required.

1. **Nova Scotia Association for Community Living**
   (formerly known as Canadian Association for the Mentally Retarded)
   contact: Mary Rothman — phone: 469-1174

2. **Canadian National Institute for the Blind (C.N.I.B.)**
   contact: Guy Woodland — phone: 453-1480

3. **Society of Deaf and Hard of Hearing**
   contact: Dawn LeBlanc — phone: 422-7130
   phone: 423-3353 (after hours)

4. **Department of Community Services**
   local, regional or district office

APPENDIX C II

DIRECTIVE OF THE DIRECTOR OF PUBLIC PROSECUTIONS IN RESPECT OF APPEALS TO THE COURT OF APPEAL UNDER PART XXI OF THE CRIMINAL CODE

After consultation with the Public Prosecution Service Management Council, the following instructions are issued to the Public Prosecution Service pursuant to s.4(e) of the *Public Prosecutions Act*.

A. Statement of Principle

1. The paramount obligation on the Crown in an appeal under Part XXI of the *Criminal Code* is to present the court of appeal with all the facts and legal authorities the Crown considers relevant to the issues the court must decide.

2. The right of the Attorney General to appeal is to be exercised with restraint in the public interest.

B. Appeal by the Attorney General Against Dismissal

1. The right of the Attorney General to appeal a dismissal can only be invoked if it is determined that the trial court:

(a) erred in law,

(b) erroneously refused or failed to exercise jurisdiction on an indictment, or

(c) erroneously stayed proceedings on an indictment or erroneously quashed an indictment.

2. In addition, the right of the Attorney General to appeal against a judgment or verdict of acquittal can only be invoked if it is determined that the judgment or verdict would not necessarily have been the same if the error in law had not been made.

3. In determining whether to launch an appeal in those cases where the right of the Attorney General to appeal can be invoked, the Crown Attorney charged with the responsibility for making the decision whether to appeal shall consider:

(a) the seriousness of the error of law made in the proceedings and its importance to the administration of justice;

(b) the potential impact of the decision as a precedent in subsequent prosecutions;

(c) whether the error of law, although not of general application, is determinative of a case that is so important that it is in the public interest that it be appealed;

(d) whether a decision not to appeal might bring the administration of justice into disrepute; and

(e) whether unusual and compelling circumstances exist requiring guidance from the court of appeal.

C. Appeals by the Attorney General Against Sentence

1. The right of the Attorney General to seek leave to appeal against sentence can only be invoked if it is determined that the sentence imposed by the trial court is unfit. In determining whether a sentence imposed by a trial court is unfit, the Crown Attorney charged with the responsibility for making the decision whether to seek leave to appeal shall consider:

(a) whether the sentence is contrary to the *Criminal Code*;

(b) whether the sentence reflects an error in principle;

(c) whether the quantum of sentence is so low as to be manifestly inadequate;

(d) whether unusual and compelling circumstances exist requiring sentencing guidance from the court of appeal; and

(e) the position taken by the Crown in the trial court.

D. Crown Appeal Procedure

1. When the Crown Attorney with carriage of a trial prosecution concludes that the right of the Attorney General to appeal should be invoked the Crown Attorney shall make a written recommendation to the Regional Crown Attorney of the region in which the prosecution originated. If the Regional Crown Attorney agrees with the recommendation, or concludes that the recommendation should be reviewed by the Appeals Branch, a *Recommendation for Appeal* (see Appendix A) shall be fully completed and submitted to the Chief Crown Attorney (Appeals).

2. The Chief Crown Attorney (Appeals) may also receive recommendations from other sources that the right of the Attorney General to appeal be invoked.

3. Upon receipt of a Recommendation for Appeal, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions of the recommendation in writing.

4. When the Appeals Branch has reached a decision whether or not to launch an appeal, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions in writing.

5. If the Regional Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch, the Director of Public Prosecutions shall review the decision.

6. The Chief Crown Attorney (Appeals), or a Crown Attorney in the Appeals Branch instructed by the Chief Crown Attorney (Appeals), may exercise the right of the Attorney General to appeal to the court of appeal.

E. Crown Representation in the Court of Appeal

1. Crown representation in the court of appeal on appeals under Part XXI of the *Criminal Code* is the responsibility of the Appeals Branch. Crown Attorneys who are not members of the Appeals Branch may, with the consent of the Chief Crown Attorney (Appeals), represent the Crown on an appeal under Part XXI of the *Criminal Code* before the court of appeal, but when doing so are accountable to the Chief Crown Attorney (Appeals).

F. Abandonment of Crown Appeals

1. The decision to appeal must be made on the basis of the best available material.

2. If the Crown Attorney with carriage of an appeal has concerns during preparation of the appeals as to whether the public interest will best be served by continuing the appeal, the Crown Attorney shall consult with the Chief Crown Attorney (Appeals) and the Regional Crown Attorney who recommended the appeal and decide whether the appeal should be abandoned.

3. Where the Chief Crown Attorney (Appeals) concludes that an appeal should be abandoned, the Director of Public Prosecutions shall be notified in writing of the reasons for the abandonment.

4. If the Regional Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch to abandon the appeal, the Director of Public Prosecutions shall review the decision.

APPROVED BY THE PROSECUTION SERVICE MANAGEMENT COUNCIL, JULY 25, 1991

APPENDIX C III

From: John C. Pearson
Director of Public Prosecutions

To: Regional Crown Attorneys
Senior Crown Attorneys
Crown Attorneys

Subject: Post-Charge Screening Pilot Project **Date** June 17, 1991

Recommendation 37 of the *Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* proposed that the Attorney General of Nova Scotia institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward. The Attorney General accepted this recommendation on February 7, 1990.

Following the appointment of Regional Crown Attorneys, the Prosecution Service Management Council commenced work on the development of procedure and standards to be used in the pilot project. The pilot project is commencing operation this month in Annapolis, Kings and Hants County and at the Spring Garden Road and Bedford Courts in Halifax County.

The purpose of this memorandum is to acquaint Crown Attorneys not directly involved in the pilot project with the procedure and standards to be followed in it. Marc Chisholm, project coordinator, and the concerned Regional Crown Attorneys have already conducted information sessions with the Crown Attorneys directly involved in the pilot project.

Objectives of the Pilot Project

The pilot project has been discussed at a number of the monthly meetings of the Prosecution Management Council. At these meetings it was determined that the pilot project will provide an opportunity to gather useful information concerning the following:

1) the frequency with which it is necessary to exercise prosecutorial discretion to terminate prosecutions;

2) the benefits to be derived from the early detection of deficiencies in Crown files;

3) the benefits to be derived from an early determination of the Crown's position on sentence;

4) the quality of Crown sheets; and

5) the efficacy of our present common assault policy.

A form has been developed to be completed in relation to each file that is "screened". This form is an internal document and will be sent to the project coordinator after it has been completed. From this data we hope to develop an information base for future policy development.

Standards for Exercise of Prosecutorial Discretion

One of the major objectives of the pilot project is to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward. In exercising their discretion to terminate prosecutions, Crown Attorneys will be guided by the principle that a prosecution should only go forward where there is evidence available on each essential element of the offence and the Crown Attorney believes there is a reasonable chance that a conviction will result if the case proceeds to trial.

In determining whether the public interest is best served by a prosecution in those cases where there is evidence which could sustain a conviction, the Crown Attorney should take into consideration the following factors:

(i) the triviality of the alleged offence or that it is of a "technical" nature only;

(ii) the age, physical health, mental health or special infirmity of an alleged offender or witness;

(iii) the staleness of the alleged offence;

(iv) the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);

(v) the likely effect of a prosecution on public order and morale;

(vi) the obsolescence or obscurity of the law;

(vii) whether the prosecution would be perceived as counter-productive;

(viii) the availability or efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;

(ix) the prevalence of the alleged offence and any related need for deterrence;

(x) whether the consequences of any resulting conviction would be unduly harsh or oppressive;

(xi) any entitlement of the State or other person to compensation, reparation or forfeiture if prosecution action is successful;

(xii) the attitude of the victim of the alleged offence to a prosecution;

(xiii) the likely length and expense of a trial;

(xiv) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

(xv) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;

(xvi) the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice.

The factors which are to be excluded from consideration in determining whether the public interest is best served by a prosecution, include:

(i) the alleged offender's race, religion, sex, national origin, political associations, or beliefs;

(ii) the prosecutor's personal feelings concerning the victim or the alleged offender;

(iii) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

(iv) the possible effect on the personal or professional circumstances of those responsible for the prosecution decision.

Before terminating a prosecution the Crown Attorney should, where possible, consult with the investigating officer and the alleged victim of

the offence. The final decision as to whether the prosecution will be terminated rests with the Crown Attorney. When a prosecution is terminated, a notation should be placed on the file indicating the reason why the prosecution is being terminated. In cases where there is evidence which could sustain a conviction but the Crown Attorney is considering terminating the prosecution in the public interest, the Crown Attorney should consult with the Regional Crown Attorney.

Common Assault Charges

During the term of the pilot project the current policy on common assaults (Blue Book 7.1 - copy attached) will, at the request of the R.C.M.P., be suspended in the project areas in relation to R.C.M.P. common assault charges. The policy will remain in effect outside the pilot project areas and with respect to non-R.C.M.P. charges within the project area.

Further Information

If you have any questions or comments concerning any aspect of the pilot project, please do not hesitate to contact your Regional Crown Attorney, Marc Chisholm, Martin Herschorn or me.

The assistance and cooperation of the Crown Attorneys directly involved in the pilot project is gratefully acknowledged. I believe the information gathered in this exercise will materially assist us in improving the service we provide the public.

From: Martin E. Herschorn
Assistant Director (Criminal)

To: Prosecuting Officers and
Assistant Prosecuting Officers

Subject: Policy Statement
- Prosecution of Assault,
Section 245(b)

Date
June 19, 1985

This Department's policy, in general terms, is not to prosecute cases of simple assault under Section 245(b) of the *Criminal Code*. However, there will be certain exceptional cases wherein it is appropriate for the Crown to become involved in such prosecutions. For example, where an assault is inflicted upon a victim who is a stranger to the perpetrator, and where the police have investigated the matter and determined that the only charge available is one of simple assault, it is appropriate for a charge to be laid and prosecuted by the Crown. Other situations might be where the victim is either elderly or very young.

Should you be faced with other assault situations which you feel justify prosecution of the matter by the Crown, I would suggest that you contact either myself or Gordon Gale for direction.

APPENDIX D

POSITION DESCRIPTION

POSITION: Regional Crown Attorney

DEPARTMENT: Attorney General

DIVISION: Public Prosecution Service

LOCATIONS: Western Region, Central Region, Cape Breton Region and Halifax Region

General Accountability:

This is a senior position in the Nova Scotia Public Prosecution Service. The Regional Crown Attorney will be accountable for the manner in which public prosecution services are provided in his/her Region. He/she will conduct prosecutions and provide management, guidance and leadership to the Crown Attorneys in the region. He/she will ensure compliance with instructions or guidelines issued by the Attorney General or the Director of Public Prosecutions.

Structure:

There will be a Regional Crown Attorney appointed for the following four regions: Western Region, Central Region, Cape Breton Region and Halifax Region. The Regional Crown Attorneys will be responsible to the Director of Public Prosecutions through the Chief Crown Attorney (Trials). The Senior Crown Attorney (Special Prosecutions Unit) will also be responsible to the Director of Public Prosecutions through the Chief Crown Attorney (Trials). The Regional Crown Attorneys will represent their regions on the Public Prosecution Service Management Council. The Crown Attorneys and support staff within each region will report through a Senior Crown Attorney (where applicable) to the Regional Crown Attorney. The Crown Attorneys conduct prosecutions within the jurisdiction of the Attorney General of Nova Scotia.

Nature and Scope

The Attorney General of Nova Scotia has the superintendence of all matters connected with the administration of justice in the Province not within the jurisdiction of the Dominion of Canada. The Attorney General's functions and powers include legislative responsibility for affairs and matters relating to courts and prosecutions. The Director of Public Prosecutions is responsible for all prosecutions conducted on behalf of the Crown and conducts all prosecutions, either personally or through the Public Prosecution Service, independently of the Attorney General except that the Director of Public Prosecutions shall comply with written instructions issued by the Attorney General.

The Crown Attorneys of the Nova Scotia Public Prosecution Service are responsible for representing the Crown in all courts in the Province in a fair, competent, and efficient manner. The Regional Crown Attorney will supervise the activities of the Crown Attorneys in his/her region. He/she monitors and evaluates their performance and ensures that all prosecutions are professionally conducted. He/she identifies the need for and assists in the provision of professional development for Crown Attorneys. The Regional Crown Attorney, depending on the nature and difficulties raised in a particular prosecution, may be involved in all aspects of the prosecution.

The Regional Crown Attorney makes the Chief Crown Attorney (Trials) aware of investigations or prosecutions which should be brought to the attention of the Director of Public Prosecutions. He/she advises the Chief Crown Attorney (Appeals) of court decisions which should be reviewed to determine if a Crown appeal is appropriate.

To meet the responsibilities of this demanding position, the Regional Crown Attorney must be cognizant of the *Charter of Rights and Freedoms*, the relevant federal and provincial statutes and the Attorney General's directives and guidelines. He/she must have a comprehensive understanding of the criminal justice system and the role of the Crown, as well as knowledge and competence in the fields of substantive criminal law, criminal procedure, and evidence.

The Regional Crown Attorney may, from time to time, recommend to the Director of Public Prosecutions that procedural directives be issued to Crown Attorneys throughout the Province. He/she monitors and advises the Chief Crown Attorney (Trials) of the progress of major prosecutions and ensures quality control is maintained in prosecutions.

The Regional Crown Attorney will provide, or supervise the providing of, advice to peace officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when such assistance is requested. He/she will be in regular contact with the R.C.M.P. and local police to ensure that the administration of justice is properly co-ordinated.

An important function of the Regional Crown Attorney is to increase public understanding of the role of the Crown Attorney and to enhance awareness in the Public Prosecution Service of the expectations and needs of all members of the community with respect to the criminal justice system. This will involve regular contact with the media, representatives of public interest groups and the general public.

The Regional Crown Attorney also responds to complaints relayed by the Chief Crown Attorney (Trials) or the general public concerning the actions of Crown Attorneys. He/she will maintain frequent contact with members of the judiciary, officials of other government departments, and private lawyers.

For the purpose of recommending policy and procedural directives to the Director of Public Prosecutions, the Regional Crown Attorney must keep abreast of developments in law enforcement throughout the Region. He/she must be continuously aware of contentious and acute areas of concern to the community, the police, the courts and Crown Attorneys so that he/she may advise the Director of Public Prosecutions accordingly.

Specific Accountabilities

1. Provides for the fair, competent and efficient delivery of public prosecution services within his/her region by managing the activities of the Crown Attorneys; monitoring and evaluating their performance and through budget control.

2. Ensures senior management is in a position to effectively address any major legal and operational concerns by continuously monitoring, analysing and reporting on the activities within his/her region and by providing timely appeal recommendations.

3. Contributes to the development and maintenance of positive relations with all members of the community by providing timely and professional advice and assistance on public prosecution issues and the

criminal justice system in general and through the effective resolution of all complaints and concerns.

4. Contributes to the overall effectiveness of the Public Prosecution Service by assisting with staff development; keeping abreast of new developments in the criminal justice system; and by receiving and recommending policy or procedural changes where appropriate.

APPENDIX E

Public Prosecution Service Regions
and Crown Attorneys' Offices
Cape Breton Region
Central Region
Halifax Region
Western Region
*Regional Office Location
*Sydney
Port Hawkesbury
Antigonish
*New Glasgow
Truro
Amherst
Dartmouth
Halifax – Spring Garden Road
– George Street*
Bedford
*Kentville
Bridgewater
Liverpool
Shelburne
Yarmouth
Digby

APPENDIX F

PUBLIC PROSECUTION SERVICE

Head Office - 8th Floor
Bank of Montreal Building
5151 George Street
Halifax B3J 1M5

		Phone	Fax
Director of Public Prosecutions	John C. **Pearson**	424-8931	424-4556
General Counsel	Gordon S. **Gale**, Q.C.	424-4032	"
	(Trials Branch)		
Chief Crown Attorney (Trials)	Martin E. **Herschorn**, Q.C.	424-4033	"
Asst. Chief Crown Attorney (Trials)	Marc C. **Chisholm**	424-7603	"
Crown Attorneys (Special Prosecutions Unit)	Gary **Holt**, Q.C.	424-6033	"
	Bernadette **Macdonald**	424-6033	"
	(Appeals Branch)		
Chief Crown Attorney (Appeals)	Kenneth W. F. **Fiske**	424-6794	"
Crown Attorneys (Appeals Branch)	Dana W. **Giovannetti**	424-6795	"
	Robert E. **Lutes**	424-6795	"
	Robert C. **Hagell**	424-8995	"

CROWN ATTORNEYS
(TRIALS BRANCH)
WESTERN REGION

Jack Buntain, Q.C., Regional Crown Attorney

County	Name	Address	Phone	Fax
Annapolis	David E. **Acker**	P.O. Box 1270, 74 Commercial Street, **Middleton** BOS 1P0 **or Kentville office**	825-6716 679-6067	679-6290
Digby	V. Blaine **Allaby**, Q.C.	P.O. Box 1449, 77 Water Street, **Digby** B0V 1A0	245-4787	
Hants	William N. **Fergusson**, Q.C.	P.O. Box 236, 87 Cornwallis Street, **Kentville** B4N 3W4 **or Windsor office**	679-6067 798-4901	679-6290
Kings	Jack **Buntain** Q.C. Darrell I. **Carmichael**	P.O. Box 236, 87 Cornwallis Street, **Kentville** B4N 3W4 "	679-6067 " "	679-6290 "
Lunenburg	Anthony W. **Brown** C. Lloyd **Tancock**	99 High Street, **Bridgewater** B4V 1V8 "	543-7662 " "	"
Queens	Craig M. **Harding**	19 Market Street, P.O. Box 1138, **Liverpool** B0T 1K0	354-3427	
Shelburne	James H. **Burrill**	Loyalist Plaza, P.O. Box 909, **Shelburne** B0T 1W0	875-3429	
Yarmouth	Robert M. **Prince**	Box 550, 38B John Street, **Yarmouth** B5A 4B6	742-2479	742-0677

HALIFAX REGION

James Gumpert, Regional Crown Attorney

Adrian C. Reid, Associate Regional Crown Attorney

County	Name	Address	Phone	Fax
Halifax	James A. **Gumpert**	Bank of Montreal Building, 7th Floor, 151 George St., **Halifax**, B3J 1M5	424-7465	424-4556
	Adrian C. **Reid**	" "	"	"
	John **Scott**	" "	"	"
	Craig R. **Botterill**	" "	"	"
	Nigel **Allan**	" "	"	"
	Robert P. **McCarroll**	" "	"	"
	John D. **Wade**, Q.C.	Provincial Court, 5250 Spring Garden Rd. **Halifax** B3J 1E7	424-8734	
	J. Christopher **Nicholson**	" "		"
	Darrell H. **Martin**	" "		"
	Frank **Hoskins**	" "		"
	William **Delaney**	" "		"
	Alanna **Murphy**	" "		"
	Donald L. **Presse**	" "		"
	Dennis **Theman**	" "		"
	James A. **Barrett**	" "		"
	John A. **Feehan**	277 Pleasant St., Suite 504, **Dartmouth** B2Y 4B7	424-2652	
	Robert **Fetterly**	" "	"	
	Paul **Bychok**	" "	"	
	Jean **Whalen**	" "	"	
	Stephanie **Cleary**	" "	"	
	Christopher **Morris**	" "	"	
	Bruce **Baxter**	" "	"	
	Susan **Potts**	Sun Office Tower, 1st Floor, 1550 Bedford Hwy. **Bedford** B4A 1E6	424-5325	
	Gregory E. **Lenehan**	" "	"	

CENTRAL REGION

T. Robert Parker, Q.C., Regional Crown Attorney

County	Name	Address	Phone	Fax
Antigonish	Ronald J. **MacDonald**	195 Main Street, P. O. Box 1263, **Antigonish** B2G 2L6	863-5623	863-7478
Colchester	William F. **Kaulback**	540 Prince Street, Suite 201, **Truro** B2N 1G1	893-5850	893-6100
	James E. **Clarke**	" " "	"	"
	Arthur **Theuerkauf**	" " "	"	"
Cumberland	David A. **Fairbanks**, Q.C.	P. O. Box 623, 54 Victoria Street, **Amherst** B4H 4B8	667-4890	
Guysborough	William F. **Murphy**, Q.C.	195 Main Street, P. O. Box 1263, **Antigonish** B2G 2L6	863-5623	
Pictou	T. Robert **Parker**, Q.C.	Bridgeview Square, 115 MacLean Street, P.O. Box 365, **New Glasgow** B2H 4M5	752-2020	755-7101
	Herman C. **Felderhof**	" " "	"	"
	Peter **Rosinski**	" " "	"	"

CAPE BRETON REGION

Frank C. Edwards, Regional Crown Attorney

County	Name	Address	Phone	Fax
Cape Breton & Victoria	Frank C. **Edwards**	77 Kings Road, **Sydney** B1S 1A2	563-3530	563-0510
"	Brian D. **Williston**	" " "	"	"
"	A. Keith **Shears**	" " "	"	"
"	Paul D. **Walker**	" " "	"	"
"	Kenneth C. **Haley**	" " "	"	"
"	Claudine **MacDonald**	" " "	"	"
Inverness	William F. **Murphy**, Q.C.	195 Main St., P. O. Box 1263, **Antigonish** B2G 2L6	863-5623	
Richmond	Richard J. **MacKinnon**	P. O. Box 479, Central Guaranty Trust Bldg. **Port Hawkesbury** B0E 2V0	625-2294	